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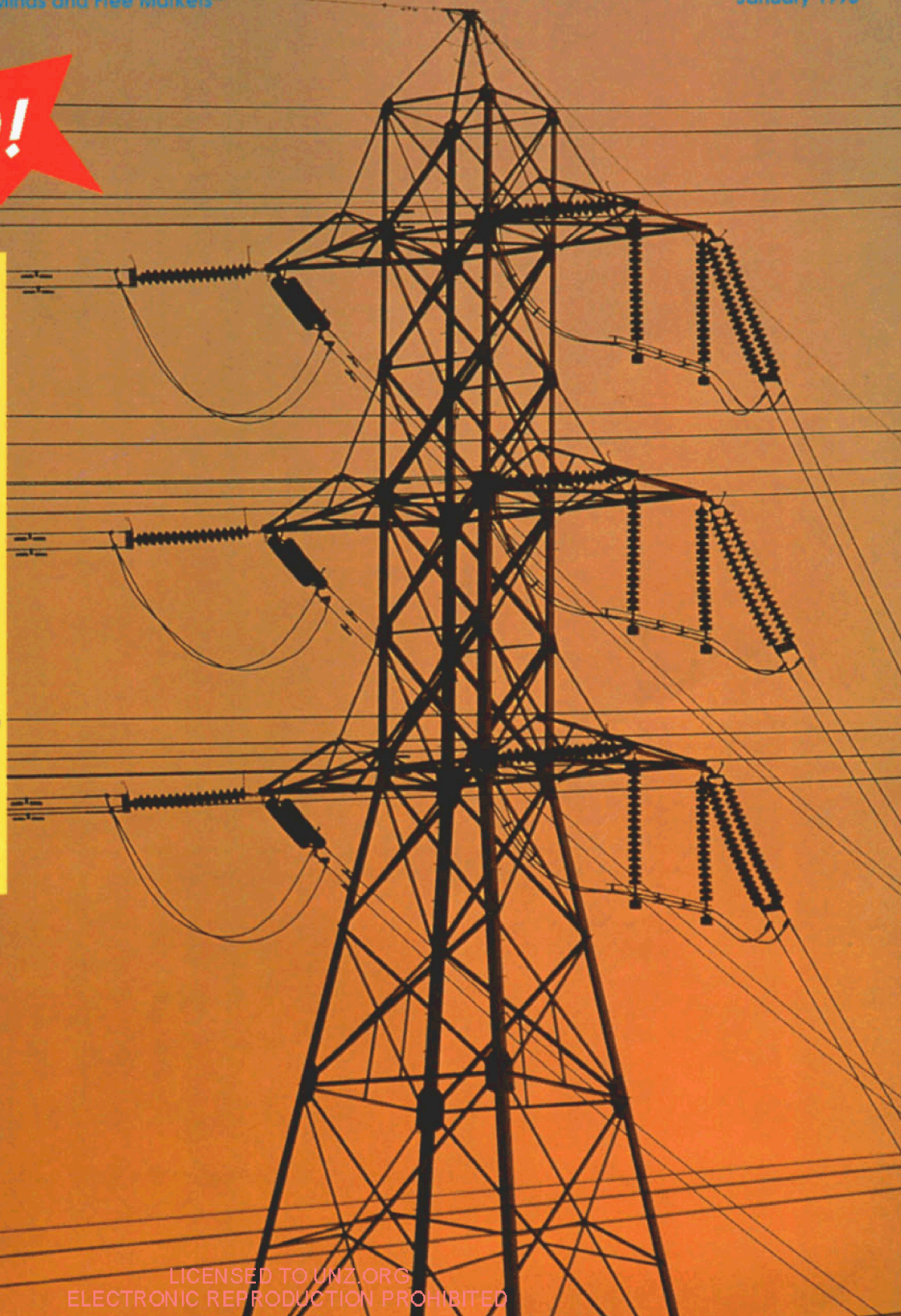

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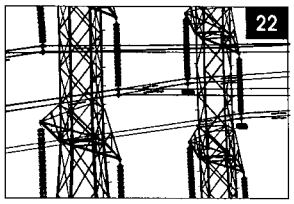

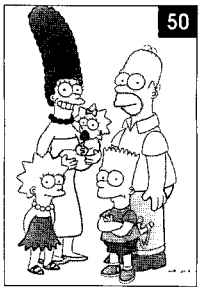

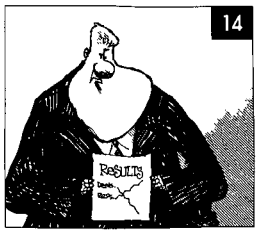

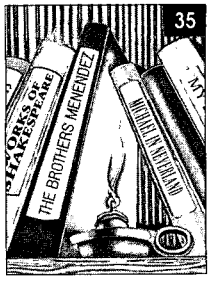

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Washington Traps

By Virginia I. Postrel

Why Republicans should be irresponsible and impolite.

I KNEW THINGS HAD CHANGED WHEN I saw Al D'Amato on *Nightline* and he started talking about privatizing air traffic control. Al D'Amato, heretofore a hack extraordinaire, had latched on to an esoteric free-market policy idea developed by...my boss.

Then things got even weirder. I ordered a transcript of that *Nightline*, which I'd only seen the end of. And lo and behold, in between discussions of Whitewater subpoenas, this same Al D'Amato started ranting about how the government won't let you say "within walking distance" in real-estate ads. Now that's an esoteric regulatory issue nobody ever talks about in public—nobody that is except...me. (See last month's editorial or various newspaper columns.)

When Al D'Amato has to bone up on substance—and Ted Koppel solicits his opinions on spending cuts and regulatory reform—something has definitely changed. And when a porkbarrel pol like D'Amato appears to be getting his ideas from REASON, we have entered a whole new world.

Or so it has seemed since November 8.

A year ago, the Clintons were getting ready to nationalize health care, Bob Dole was rushing to help, and Newt Gingrich was murmuring support. The only members of Congress you could count on to defend freedom over Clintonite "security" were economists from Texas, one for each house. Now Dick Armey is going to be House majority leader and Phil Gramm is all over television drawling such heretical sentiments as, "Why should we want to go halfway in the wrong direction?"

Why, indeed? And yet, until recently, that was exactly the plan. Which is why, despite a certain giddy delight at the triumph of people who speak the language of limited government, I'm not convinced. The culture of Washington is desperately trying to reassert itself, and the Republican upstarts should beware its traps.

THE MOST DANGEROUS IS THE "RESPONSIbility" trap. Here's how Sen. John Breaux (D-La.) explains it: "It's easy to be a critic. I mean, Sam Rayburn said that any jackass could kick down the barn, but it takes a real carpenter to build one... [W]hen you see the Republicans having the responsibility of governing, it's going to be different."

But "responsibility" in Washington doesn't mean living up to your commitments, sticking to your principles, or bearing the consequences of your actions. It means not rocking the boat. It means minding your manners. It means treating government like a dinner party.

Washington's governing class has two basic modes of behavior: campaign mode and dinner party mode. In campaign mode, you're allowed to say just about anything about your opponent, no matter how nasty. But everyone knows that it's all a game, that the rough rhetoric is for the benefit of the voters. It isn't serious.

When the campaigns are over, Washington enters dinner party mode—often literally. At a dinner party, the polite guest will avoid confrontations with his or her fellows. Three days after the election, when I found myself seated at a table full of reeling academics, we discussed such safe questions as whether easy absentee voting would increase turnout. It was the political equivalent of small talk.

That's fine for a real dinner party. But Washingtonians apply the same notions of politeness outside the dining room. A year ago, they were rolling their eyes at the uncouthness of Gramm's and Armey's opposition to ClintonCare. Now they're baffled at what Gingrich might mean by, "I am very prepared to cooperate with the Clinton administration. I am not prepared to compromise."

If Gingrich is responsible, really, he'll stick to that promise amid the inevitable cries of "gridlock." Such cries can be intimidating in a town where most people honestly believe that Congress is like a widget factory—that its productivity depends on how many new laws it passes.

The great advantage of the Republican Contract With America is that it gives the new Congress lots of laws to pass—laws that, on the whole, roll back government. And if the Republicans want to give Bill Clinton brain lock, they can send him even more bills that will be popular with the public while offending Democratic interest groups: to limit the Endangered Species Act and federal wetlands regulation and pay affected landowners compensation; to abolish the National Endowments for the Arts and Humanities and the Corporation for Public Broadcasting; to scale back the Americans with Disabilities Act; even to force the Postal Service to refund postage on undelivered mail.

Washington has still more traps for the Republicans, however. They could lose sight of long-term policy in a quest for short-term political scalps; his *Nightline* appearance notwithstanding, D'Amato still cares more about scandal than privatization. They could buy into new poll-driven "crises," like the alleged demand for health-care reform. They could try to please constituent groups, notably the religious right, with divisive social legislation rather than broadly popular economic reforms. They could decorate the tax code with new loopholes, making a future flat tax difficult to pass and disruptive to people's plans. They could blink when faced with the consequences of their plat-

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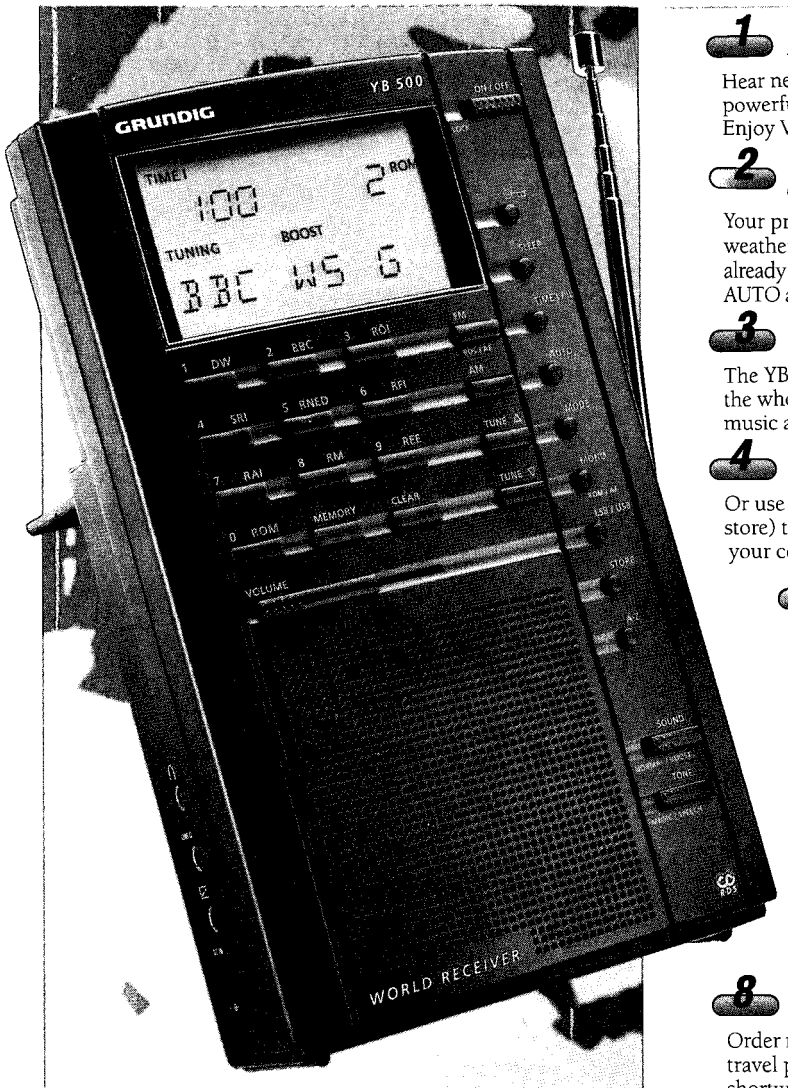

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form—the laid-off Hill staffer or the former welfare mother who can't find work. They could be embarrassed by characterizations of their supporters as "angry white males" or "business."

Some of their allies, and most of their enemies, would make the best the enemy of the good, blocking any talk of cutting taxes or spending until the Republicans introduce a complete overhaul of Social Security. They would be wise to hold off; after a couple more years of having Sam Donaldson, Bob Kerrey, and Alice Rivlin beg for Social Security cuts, a new Congress might actually be able to pass them without facing an armed revolt.

"Let's Make Welfare as Hard to Get as a Building Permit," goes the bumper sticker, and welfare is only half that story. The public is tired of being bossed around. For the Republicans to succeed, they'll have to remember that—especially when Washington starts telling them to be "responsible."

Sobriety Test

By Rick Henderson

How to tell if the GOP is serious about shrinking government.

ASSESSING THE REPUBLICAN electoral sweep on Washington's *Fox Morning News* November 10, Texas Sen. Phil Gramm said voters "didn't send us here to raise taxes half as much as Bill Clinton, increase spending half as much as Bill Clinton, or increase regulations half as much as Bill Clinton." Gramm will try to set himself apart from other presidential contenders with an unapologetic, fiscally conservative agenda. But will Gramm's stances position him at the center of his party or on its fringes? Here are several issues the Republicans must confront if they want to be considered serious government cutters:

• *Tax fairness.* Rep. Dick Armey, the likely House majority leader, wants to replace the current loophole-ridden Internal Revenue Code with a 17-percent flat-rate tax and allow large standard exemptions. Armey's plan would end the use of the tax code as a tool of income redistribution and behavior modification and would restore its appropriate purpose—raising money to operate the federal government.

Armey's tax revolution won't happen overnight. But Republicans could simultaneously fulfill one plank of their Contract With America and launch a preemptive strike for Armey's tax crusade by cutting the tax on capital gains to 17 percent and indexing the gains so that inflation doesn't penalize persons who hang onto their investments.

• *Budget reform.* Since 1974, Congress has used "baseline budgets." The Congressional Budget Office projects how much federal agencies will spend over the next five fiscal years, building in increases. When spending rises by less than the CBO projects, Washington insiders declare that a spending "cut."

For the past five years, Rep. Chris Cox (R-Calif.) has called for an end to baseline budgeting. Instead, he wants Congress to prepare a one-page budget spelling out how much the government can spend in each of the 19 budget categories. If Congress spends more money in one category than the budget allows, the president can rescind spending until the target is met. And when the budget is up for renewal, if Congress doesn't pass an appropriations bill for an agency, that agency can spend only as much as it did the previous year.

Incoming House Speaker Newt Gingrich promises an end to baseline budgeting. Cox's proposal would further brake spending growth.

• *Spending cuts.* In 1993, Ohio Rep. John Kasich and Republicans on the Budget Committee proposed a five-year program that would cut $479 billion in spend-

ing from the president's budget. The Kasich plan would have abolished the Interstate Commerce Commission, halted federal land purchases for five years, and frozen cost-of-living allowances for military retirees younger than 65.

The Kasich plan offers a starting point for more dramatic spending cuts. Federal welfare programs offer obvious targets. Defunding the Corporation for Public Broadcasting and abolishing the National Endowment for the Arts and the National Endowment for the Humanities should also be no-brainers.

• *Entitlements.* Republicans will demonstrate their seriousness as budget cutters when they decide to confront or evade Social Security, Medicare, Medicaid, and federal pensions. Those programs, along with interest on the debt, consume half the federal budget now and will increase to nearly 70 percent within 10 years.

The Bipartisan Commission on Entitlement and Tax Reform will issue its recommendations in mid-December. Whatever the commission recommends, Republicans could build a bipartisan bridge by pushing to increase the retirement age gradually and immediately. Rep. J.J. Pickle (D-Tex.) proposes increasing the retirement age by two months a year indefinitely; this would make the retirement age 66 in 2001, 67 in 2007, and so on.

Unfortunately, in a November 11 speech, Gingrich said it would be a mistake to make any changes in Social Security before the turn of the century. The sooner elected officials tackle retirement programs, the less dependent those programs will be on tax dollars when Gingrich's generation retires.

• *Regulations.* One of the most innovative ideas of the 103rd Congress was the A-to-Z spending-cut program proposed by Reps. Rob Andrews (D-N.J.) and Bill Zeliff (R-N.H.). The plan would have let each member of Congress propose a single spending cut or package of cuts anywhere in the federal budget and then required the House to vote on each cut.

Democratic leaders prevented A-to-Z from getting to the House floor. But the A-to-Z format could be adapted for regulations as well. Why not have a "regulatory A-to-Z" that forces votes on, say, the auto-emissions regulations in the Clean Air Act? The Family and Medical Leave Act? The wetlands provisions of the Clean Water Act? The Endangered Species Act?

Regulations are the big test of whether Republicans are serious about reducing the size and scope of government. But Gary Bauer, Paul Weyrich, and other prominent social conservatives are pushing congressional Republicans to fill the legislative calendar with proposals to zap porn, bash gays, and outlaw abortions—in other words, to increase non-economic regulations. If Republicans want to become the majority party of the 21st century, they must recognize that getting Big Brother out of our wallets while inviting him into our bedrooms is no bargain. ◆

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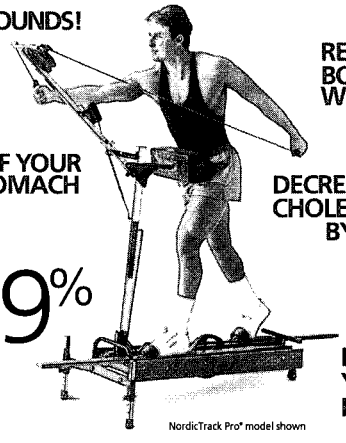

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Taking Liberties

I would like to thank REASON for printing the interview with Nadine Strossen ("Life, Liberty, & the ACLU," October). If anything can convince those of us who are concerned with liberty that the ACLU doesn't represent us, it is that interview. In the past 50 years, the government has grown in power and size and has become more tyrannical in its scope. Where has the ACLU been while all this has transpired? Why, chasing church ladies off government property, and patrolling school grounds in search of those naughty, praying children, of course.

As someone who is irreligious, I am not in the least bit afraid of Pat Robertson or Jerry Falwell. They can take nothing from me that I do not choose to give to them. The government, on the other hand, is characterized first and foremost by its ability to use force.

Yet we find that in cases that matter to most Americans—school choice, gun control, property rights, and taxes—Ms. Strossen and the ACLU come down on the side of the government. America desperately needs an organization dedicated to fighting for individual liberty. Unfortunately, the ACLU isn't it.

Ken B. Steen
Greensboro, NC

Ms. Strossen's positions seem to be reliant upon "case-by-case" examination, meaning that no one could have fair warning that a law was about to be broken until some subjective judge had a chance to review the activity in question, and decide based on what he feels.

Her view on the rights of the owners of rental properties is a classic example of this unworkable, subjective philosophy. While upholding the right of a property owner to control rentals in "an owner-occupied" dwelling, Ms. Strossen then says, "suppose it's large enough so that it's not really a private dwelling?" Where would Ms. Strossen draw this arbitrary line at which property ceases to be a private dwelling because it has grown too large? At that point, is it "public" property, since it's no longer private? Has she ever heard of the Takings Clause?

Her position on the shopping mall question is the fatal blow, showing that she is more interested in power than in justice or rights. "The common area in the mall, which is the functional equivalent of a *sidewalk* outside the traditional store or town square" must be open to all forms of private expression. The "common area" is not the functional equivalent of a sidewalk. It differs in that it is built, owned, maintained, and serviced at private expense. And to create a positive responsibility for owners (such as disclaimer signs, counter-speech, and the rest of the garbage suggested by Ms. Strossen) is to deny that property rights exist. Of course, this denial is a cornerstone of the ACLU platform.

T. Anthony Rowls
Cincinnati, OH

For some time I have been offended by the ACLU's relative blindness regarding our Second Amendment rights, particularly when compared with its tireless efforts to support the First Amendment, and its infuriatingly microscopic vision when it comes to the rights of individuals who are essentially violent criminals.

The ACLU needs to do a better job of protecting the rights of those of us who are not inclined to infringe on the rights of others. Unfortunately, after reading your interview with its new president, Nadine Strossen, I can only conclude that if the quality of her thoughts pertaining to the Second Amendment is representative of her abilities in general, the ACLU is in more trouble than ever.

First, she stated that the inclusion of the phrase "well regulated" in the language of the amendment itself "seems to defy any argument that regulation is inconsistent with the amendment." This is a truly otiose argument on her part. It's ludicrous to imagine that the phrase was originally intended to refer to regulation in the sense of rules or limitations. It conjures up an image of a militia of bureaucrats straining to carry 50-pound military handbooks along with their rifles. Undoubtedly, the intended meaning of the root word *regulate* was more like "to put in good order," the fourth meaning of the word shown in my copy of Webster's dictionary.

The wording of the Second Amendment clearly implies that the framers of the Constitution wanted a militia that could shoot well, not one that could cope with regulatory minutiae. I noticed that Ms. Strossen did not try to make nonsense out of the phrase "the right to keep and bear arms shall not be infringed." She simply ignored it. I wonder how she would interpret the word *infringed.*

Second, she attempted to evade the issue of the ACLU's lack of support for the Second Amendment by asserting, "civil liberties are [not] necessarily coextensive with constitutional rights." She goes on to egregiously assert, "The fact that something is mentioned in the Constitution doesn't necessarily mean that it is a fundamental civil liberty." While I agree with her former assertion, the latter is just wrong. Looking at it in terms of set theory, constitutional rights are subsumed by the larger set of civil liberties, but to

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assert that any of the constitutional rights is outside the set of civil liberties is pernicious.

Last, Ms. Strossen said she does not believe "having a gun in your home is something that can ultimately fend off the power of a tyrannical government." This is another piece of sophistry; her implicit argument is that small arms are ineffective against a modern army. Does she not remember how effective widely distributed small arms were against our vastly more powerful army in Viet Nam? Furthermore, her argument begs the question: What could one resort to using to fight tyranny after guns are banned? Does she think that bricks and pitchforks would work better?

While she is right that is far better to fend off tyranny with words rather than guns (and I suspect we both believe that the First Amendment is our most important civil liberty), she exhibits a massive failure to comprehend the significance of the Second Amendment. Without any power behind them, the First Amendment and all the others that come after are just so many insubstantial words. The Second Amendment provides a tangible distribution of real power in the hands of the people, and this is something far more precious than Ms. Strossen and the ACLU are willing to acknowledge.

Norman Smith
Compuserve 73642,2272

Nadine Strossen should dust off one of her old grammar texts and use it to re-examine the Second Amendment. "Well regulated" modifies "militia," not "people."

Obviously, a well-regulated militia is more valuable a force in service of a community of free citizens than is an unregulated militia. Hence, the opening phrase of the Second Amendment. The following clause guarantees (supposedly) a ready supply of armed citizenry from which a well-regulated militia can be drawn.

Paul Wescott
Compuserve 71700,1502

The Founders and Framers all believed that the unorganized militia consisted of

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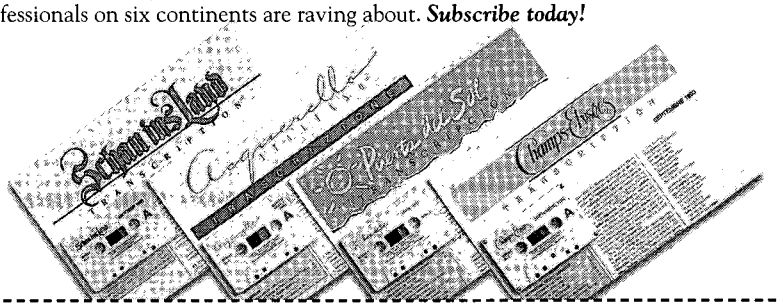

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all able-bodied citizens. A few examples are instructive: "A militia when properly formed are in fact the people themselves ...and include all men capable of bearing arms....To preserve liberty it is essential that the whole body of people always possess arms," Richard Henry Lee, *Additional Letters From the Federal Farmer* 53 (1788). "I ask, sir, what is the militia? It is the whole people, except for a few public officials," George Mason, 3 Elliot, *Debates in the Several State Conventions on the Adoption of the Federal Constitution*, Vol. 2 at 97 (2d Ed., 1888). "[The Constitution preserves] the advantage of being armed, which the Americans possess over the people of almost every other nation...[whose] governments are afraid to trust the people with arms," James Madison, *The Federalist* No. 46 (1788).

It is no accident that proponents of the view that the Second Amendment only guarantees a collective right and not an individual right never quote the Founders or Framers to support their arguments. The reason is because there is no support for that view to be found in the writings of the Founders or Framers.

Daniel J. Schultz
President and Founding Member
The Lawyers' Second Amendment Society
Encino, CA

Ms. Strossen's rationale for the ACLU's abandonment of the right to keep and bear arms is: "What it [the pro-gun position] comes down to is the very strong belief that having a gun in your home is something that can ultimately fend off the power of a tyrannical government. I find that really unpersuasive in the 20th-century context. Maybe it made sense in the 18th century."

Recent history offers numerous examples of lightly armed men able to inflict grievous damage on vastly superior forces. Afghanistan's *mujahadeen* initially armed with archaic Lee-Enfield bolt-action rifles, stalled the Soviet Red Army for many years before receiving the advanced weapons from the West that finally tipped the balance of power in their favor. Chad's desert fighters managed to beat back Gadhafi's tank forces by the simple, insanely brave expedient of mounting captured Libyan anti-armor weapons on their Toyota pickup trucks and charging the invaders in packs. More recently, 5,000 Croat defenders carrying hunting rifles and Kalashnikovs were able to defend the medieval city of Vukovar against 25,000 Yugoslav army troops and Chetnik irregulars backed by Soviet T-84 tanks and heavy artillery for *89 days* before they ran out of ammunition and were overrun.

Mark Penman
Carrboro, NC

Ms. Strossen replies: Although your readers have raised questions about several is-

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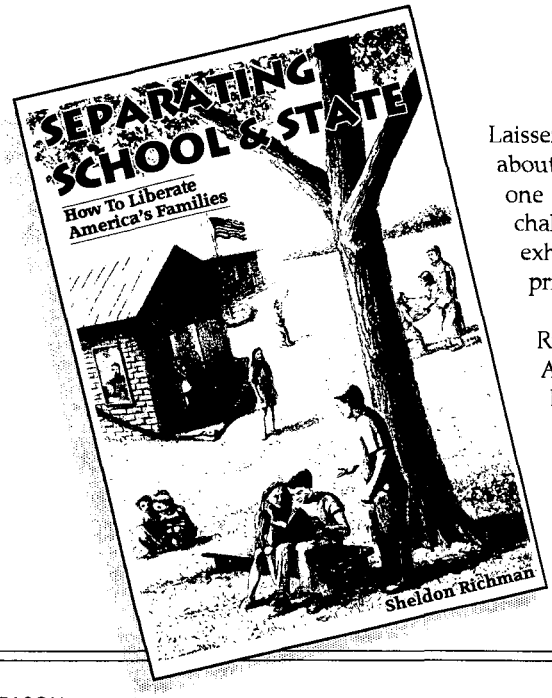

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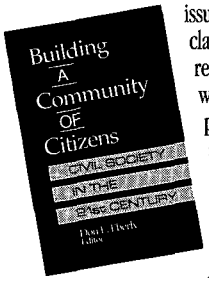

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LETTERS

sues I discussed in my interviews with Cathy Young, a majority seem concerned about the ACLU's position on the Second Amendment. I therefore decided to use the limited space available to further clarify this position.

The national ACLU does not affirmatively support gun control legislation, believing that it cannot be justified on civil liberties grounds. The question whether any particular regulation affecting guns is barred by the Second Amendment, or civil liberties principles, is more complicated, however.

We are familiar with recent scholarship that challenges the prevailing (although old) Supreme Court doctrine regarding the original intent of the Second Amendment. This scholarship argues that the amendment was specifically intended to protect the right of individuals to own and bear arms, whereas the Supreme Court had held that its intent was to secure the states' right to maintain militias as a hedge against federal power. Both claims are probably correct because in the 18th century the militia consisted of citizens who brought their own arms.

As in other disputes about the meaning of constitutional provisions, the attempt to discern a specific original intent is of limited use, and certainly not dispositive, in setting modern arguments. One has to look beyond the specific 18th-century circumstances and instead try to discern what broad purpose or value was being served, and how that might be served today.

The Bill of Rights clearly was passed to protect citizens and states from federal power, and not to restrain state powers. Thus the Second Amendment did not prevent state or local governments from disarming individuals—e.g., no one ever suggested that Wyatt Earp and other local lawmen who disarmed people in Dodge City and other western towns were violating the Second Amendment—because everyone understood that it only created a right against the federal government. Its purpose was to maintain the local means to resist potential tyranny by the federal government.

In light of this underlying broad purpose, it is difficult to discern the relevance of the Second Amendment today. State laws that attempt to disarm individuals as a way of reducing violent crime seem to have little to do with resisting the tyranny of the national government, and seem more analogous to the sort of disarming that western sheriffs imposed on townspeople without anyone seeing a Second Amendment violation.

The strongest civil libertarian reason for opposing gun control laws is the same that motivated the original drafters of the Second Amendment: to maintain the ability to resist armed tyranny by the government. But if armed tyranny comes from Washington, it will not come armed with pistols. In the modern world, no citizenry can effectively resist an armed government with handguns alone. So to achieve the desired purpose, one would have to argue that in the modern world, the Second Amendment confers the right of individuals to own tanks, bazookas, antiaircraft missiles, jet fighters, attack helicopters, and even tactical nuclear weapons. I know of no Second Amendment advocate who takes that position, but without it, the civil liberties underpinning of the argument collapses. Once all this heavier weaponry is banned, the ability to resist a standing professional military is practically non-existent.

Moreover, since the Second Amendment refers only to "arms" and does not distinguish among types of arms, any concession that the Second Amendment does not protect an individual's right to own a tank or nuclear weapon introduces a "rule of reason" not explicitly present in the Amendment's language. If such a "rule of reason" can be invoked to justify banning individual ownership of tanks and nuclear arms, why can't it also be used to ban, say, assault rifles or to require registration while permitting ownership?

Correction:

In the Trend "Architectural Correctness?" (October), the town name of Issaquah, Washington, was misspelled.

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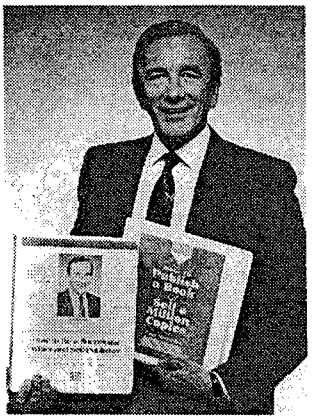

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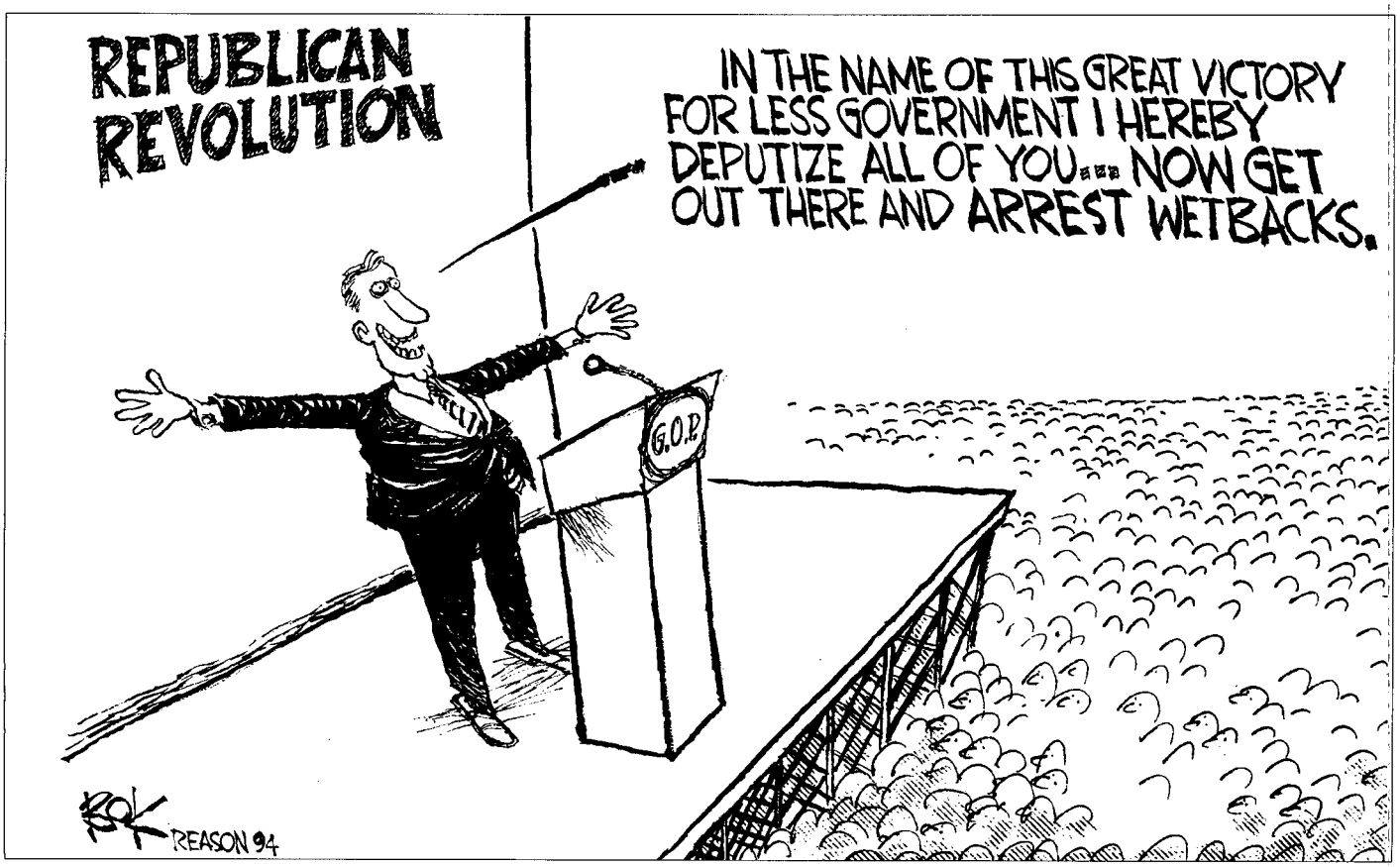
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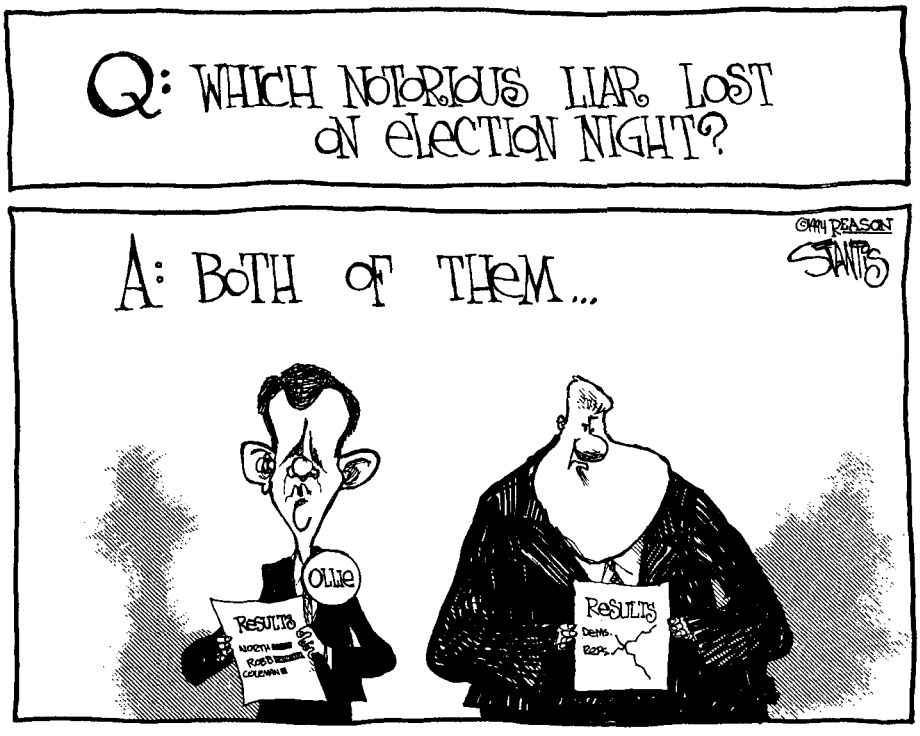


SCOTT STANTIS

■ **Gary Selick just had to have him**self a Grand Slam Breakfast at Denny's. Unfortunately the 405-pound man could not fit into any of the restaurant's regular chairs. The hostess even found an armchair, but that still wasn't big enough. Some of us might think this a sign that we should forego that Grand Slam Breakfast, and probably a few other meals as well. Not Mr. Selick, who has sued Denny's for failing to accommodate him under the Americans with Disabilities Act and for inflicting emotional distress. He wants $1.3 million.

■ **In Topeka, 16-year-old Sam Roper has** asked his high school to record his picketing against gay rights as part of his required community service.

■ **In answer to that age-old question, it** was apparently duck season, not rabbit season, in Colorado. A man in a duck suit working for incumbent Democrat Gov. Roy Romer attended appearances by his GOP challenger Bruce Benson. The move was designed to highlight the fact that Benson "ducked out" of scheduled debates with Romer. But the duckman claims that Benson's campaign director spat on him, poked him in the chest, shouted obscenities at him, and challenged him to a fistfight. The duck said, "I don't debate and I don't fight. I'm only a poor duck out to make a living."

■ **At last year's meeting of the Infectious** Diseases Society of America, researchers were stationed in the restrooms to watch the physicians after they did their business. The results: 44 percent of the male experts in the spread of disease, and 13 percent of the females, did not wash their hands.

■ **All guns sold in Fulton County, Georgia,** must carry a warning label saying that having a gun in the house increases the odds that the owner or a relative will be killed. What next? A label warning that owning a car increases the odds that the owner or a relative will die in an automobile accident? A label on fried chicken warning that it can lead to heart attacks? How about a warning on politicians that they will pass silly laws?

■ **A quiz. Suppose you're a high school** administrator and one of your foreign exchange students has a problem with body odor. What do you do? Have a little talk with him in your office? At Dossier City, Louisiana's Airline High School, administrators sent letters to each of the school's 16 exchange students stressing that "Americans find body odors highly offensive" and asking the students to bathe daily "so as not to offend your American hosts." The 15 students who didn't stink were understandably disturbed by the letter. The one who did should find a lawyer. Body odor may be covered by the Americans with Disabilities Act.

■ **University of Idaho student Jason** Wilkins thought it would be fun to moon a group of his friends standing outside a dorm. He tried to climb onto a three-foot-high heater in front of a window on the dorm's third floor. But he slipped and fell off the heater and through the window, breaking several bones and cutting himself up. You've guessed the punchline. He's now filed a claim for $940,000, charging the university with negligence for failing to properly supervise his behavior and for not warning him of the dangers of falling through a third-floor window.

■ **In Iowa, Barry Lee McMahon will have** to turn in his personalized license plates, says the state Supreme Court. The Department of Transportation demanded that he return the plates, which read 3MTA3. The DOT claims that when viewed through a mirror, the plates read EATME.

■ **Who's that selling crack near the** schoolyard? It may be the police. Orange County, California, authorities revealed that they have been manufacturing crack for police to sell in undercover operations, including one near an elementary school.

■ **When David Peterson's 5-year-old** daughter slammed her sister's fingers in a car door, he did what many American parents would do: He gave her eight swats on her bottom. Unfortunately, parents in Canada, where Peterson was visiting, apparently do things differently. Police charged him with assault.

—Charles Oliver

Winning by Forfeit

Recent court decisions limit state seizures.

By Nick Gillespie

THE NAME RENATO TORRES WON'T ever become a synonym for good luck: Torres and an associate were the objects of a federal sting operation that led government agents to seize $60,000 in cash with which Torres had tried to purchase three kilograms of cocaine. In the subsequent criminal prosecution, Torres entered a guilty plea and received a sentence of 73 months in jail.

But Torres's name may ultimately be closely linked to what one judicial activist calls an incipient "revolution" in forfeiture law. That's because Torres appealed his conviction on the grounds that following the $60,000 forfeiture, any further punishment violated constitutional guarantees against double jeopardy—being tried or punished twice for the same crime.

Torres's lawyers based their arguments on two recent Supreme Court rulings. The first, 1993's *Austin v. U.S.*, established that civil forfeitures can be considered "punishment" subject to the Eighth Amendment's "excessive fines" clause. The second, 1994's *Montana v. Kurth*, declared that the imposition of a tax on confiscated drugs constitutes double jeopardy if the person possessing the drugs has already been sentenced in a criminal proceeding.

Although Torres's appeal was denied—he had never filed a claim to the confiscated money—the 7th Circuit Appeals Court accepted as valid the legal reasoning behind the motion. And that may amount to a major reversal in the next few years on all forfeiture issues, says Brenda Grantlin, president of Forfeiture Endangers American Rights (FEAR), a group dedicated to reforming forfeiture laws, restoring due process, and protecting property rights.

Currently, law-enforcement agencies are able to pursue parallel civil and criminal prosecutions and can often keep assets seized in a civil proceeding even if the criminal case results in an acquittal. But by ruling that civil forfeiture may invalidate criminal prosecution (and vice versa), *Torres*, along with two other 1994 verdicts, *U.S. v. $405,089.23* (decided in the 9th Circuit Appeals Court) and *U.S. v. McCaslin* (decided in a federal district court in Washington state), will force prosecutors to pursue either a criminal forfeiture (if the defendant is found guilty) or a civil forfeiture without criminal prosecution.

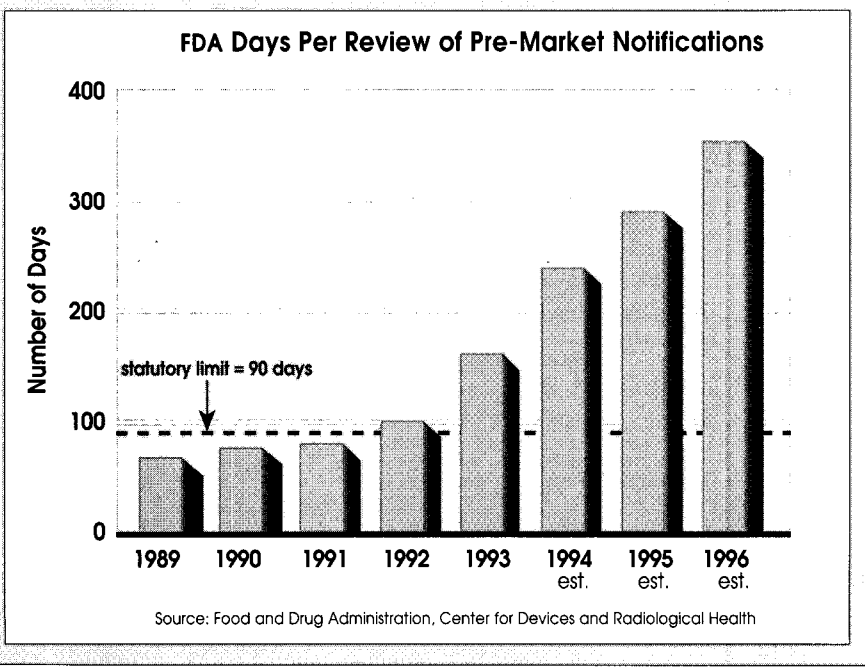
That means, says Grantlin, that law enforcement agencies will have to clarify whether they believe assets are proceeds from illegal activity before they freeze or seize them and that they may not be able to conduct a civil forfeiture after a criminal acquittal. The court's acceptance of the double jeopardy limitation may curtail what Grantlin calls the "Sheriff of Nottingham syndrome—the taking of whatever the government wants." ®

Left to Their Own Devices

FDA death toll rises as regulatory delays increase

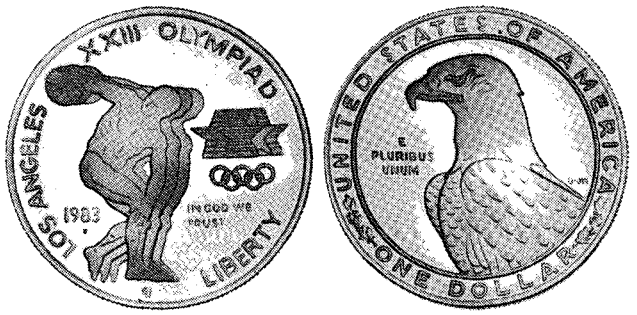
By Alexander Volokh

Every year, thousands of Americans die because the Food and Drug Administration denies them access to life-saving medical devices. And things aren't looking up. For all but the riskiest devices, manufacturers have to submit a "pre-market notification," which is supposed to be approved or disapproved within 90 days. At first, these were routinely approved, but that changed after 1990. Thanks to the Safe Medical Devices Act of 1990 and the Medical Devices Amendments of 1992, the FDA spends more time reviewing applications than ever before. And Commissioner David Kessler has been calling for increased "consumer protection" (i.e., regulatory power) ever since he was appointed in 1990. Now he wants "user fees" to increase Device Center staff—$3,200 for run-of-the-mill devices and up to $50,000 for riskier ones.



Source: Food and Drug Administration, Center for Devices and Radiological Health

Gem Proof Silver Dollars ...less than $10 each!



U.S. Silver Dollar, 1983 Olympic

U.S. Silver Dollar, 1986 Statue of Liberty

During the 1980s, we warned you against buying the Proof Silver Dollars offered by the U.S. Mint. We felt the Mint's prices were so high that those who bought were guaranteed to lose money.

We were right. People who bought from the Mint did lose money, and lots of it.

But today, the market has over-reacted. It is possible for you to buy these large, 90% silver dollars at a fraction of their issue price, *even cheaper than common date Mint State Morgan and Peace dollars*. But you must act quickly!

The 1983 U.S. Silver Dollar issued to commemorate the 1984 Olympic Games in Los Angeles — with its Olympic discus thrower on its obverse and a deviant American Eagle on its reverse — is a magnificent coin. Back in 1983, the U.S. Mint charged $24.95 for it.

That price was too high, and savvy investors stayed away from the 1983 Olympic dollar.

Today, you can buy the 1983 Olympic dollar, in gleaming Gem Proof condition, still in the special protective holder issued by the U.S. Mint, for less than $10.

Its price today is a bargain.

Bargains from the Eighties

The same is true of the 1986 Statue of Liberty Silver Dollar, pictured above to the right: its design is beautiful, its high purity and heavy silver content make it a magnificent coin. At the Mint's price of $22.50, it was too expensive. But at today's price of about $10, it's a bargain.

The same is true of the 1987 U.S. Constitution Silver Dollar, and the 1988 Olympic Silver Dollar . . . they are magnificent coins, beautifully designed and perfectly struck. And overpriced by the Mint, but a bargain at today's price.

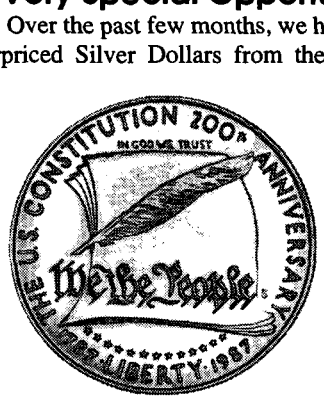
A Very Special Opportunity

Over the past few months, we have been quietly acquiring the underpriced Silver Dollars from the 1980s, carefully acquiring only coins in Gem Proof condition, in the original protective holders issued by the U.S. Mint. Thanks to our careful efforts, we have been able to accumulate more than 2,000 specimens, which we offer in bulk lots as cheaply as $9.95 per coin.

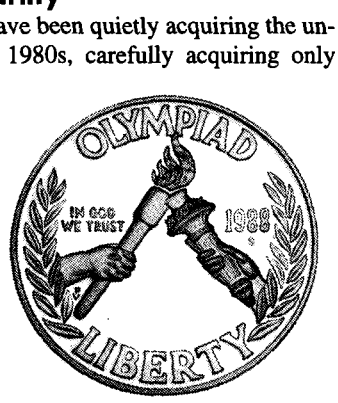
That's a savings of 54% to 69% compared to the U.S. Mint's original issue prices, which ranged from $22.50 to $32.00! Think of it . . . Silver Dollars struck to the high standards of the classic Morgan Silver Dollar, at a price well below both the original issue price and the current catalog value! And in Gem Proof condition!

Act Today! The low price has already stimulated buying from dealers and investors. We are aggressively buying coins for our inventory, but we cannot guarantee to hold our price once our inventory is depleted.

To confirm your purchase, call toll-free at 1-800-321-1542. (In Michigan call 1-800-933-4720.) Or return the coupon below.



1987 U.S. Constitution Silver Dollar



1988 Olympic Silver Dollar

Yes! Please send me the rolls of 20 U.S. 90% Silver Dollars in Gem Proof condition that I have indicated below. I understand that all are Commemorative issues from the 1980s, issued in accordance with the old standard for U.S. silver dollars as issued 1878–1935, and are backed by your exclusive guarantee of grading and authenticity, and that I may return any within 15 days for a full refund.

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Privatizing Internet

Phasing out government subsidies for Internet infrastructure

By Brian Doherty

AL GORE MAY HYPE GOVERNMENT spending to guarantee universal access to the "information superhighway," but one government agency is phasing out spending on one aspect of the Internet in recognition of an ever-growing group of market providers.

The Internet is that concatenation of linked computer networks that allows far-flung researchers, writers, and citizens instant or almost-instant access to the latest scientific research, weather data, or even just letters from friends.

The National Science Foundation, which provided infrastructure support for this network of networks through its NSFNET program since 1985, has begun gradually eliminating such funding over the next five years. (It will continue to subsidize connection fees for specific institutional users.) Eliminating the NSF's subsidy to the "backbone" of the Internet (the infrastructure that links local service providers) has made some users nervous, NSF spokesperson Beth Gaston acknowledges. "There's a sense of protectiveness on the part of Internet users, like 'We have this, don't mess with it.' With any change people are concerned. In this case the concerns are mostly unwarranted."

Chief among the concerns is that with for-profit businesses running things, the breadth of Internet connectivity could be reduced. Mark Miller, a software architect with Agorics Inc. in Los Altos, California, argues that that fear stems from a "misunderstanding and mistrust of market forces. The benefits of Internet are very much in scale with the number of other people [you can] connect with. Anyone not offering connectivity with as many different aspects and services as possible would be cutting their own throat."

Dave Farber, a professor of telecommunications systems at the University of Pennsylvania, says the NSF funding cutback can be seen as a victory for markets in computer interconnection services. Since the NSF began its involvement in the Internet, the number of users and the number of businesses in the network service provider business has boomed. "We're better off letting prices be driven down by the private sector," Farber says. "In two or three years you won't see any difference in access, and you'll even see lower prices."

Grade Inflation?

A congressional ratings clash

By Rick Henderson

DID A WAVE OF FISCAL RESPONSIBILITY sweep Democrats in the 103rd Congress? Ratings compiled by Citizens Against Government Waste, the advocacy group formed in the 1980s to promote the Grace Commission's government-cutting agenda, show scores improved for congressional Democrats while Republicans fell behind. Other fiscal conservatives contend that CAGW may have given Democrats a free ride.

For the second session of the 103rd Congress, CAGW tallied 37 votes in the House of Representatives and 34 votes in the Senate. In both houses, Republicans scored higher than Democrats—74 percent to 38 percent in the House, 65 percent to 31 percent in the Senate. The gap between Democrats and Republicans is fairly consistent with those in earlier sessions of Congress. Even so, when compared with the 102nd Congress, Republican scores this session dropped by 2 percentage points in each house while Democrats increased their ratings by 12 points in the House and five points in the Senate.

The drop has some observers crying foul. CAGW "was either very naive or simplistic about which votes they chose to rate or they selected votes deliberately designed to boost Democrats' scores," says political economist Daniel Mitchell of the Heritage Foundation.

Any rating system is subjective. But CAGW included several curious items in their tallies while leaving out some potential budget busters. For instance, the group rated a vote to cut a $2.5-million marksman's training program. But it excluded votes on the president's national service program—a potentially open-ended entitlement for college students—and on the National Competitiveness Act, a bill that approved $1.9 billion in spending for industrial-policy planners (See "Competing Visions," July).

The House ratings included a unanimous vote to make the Social Security Administration an independent agency and to exclude substance abusers from the Supplemental Security Income program. Including unanimous votes in a ratings scheme says nothing about the behavior of individual legislators, unless the group conducting the ratings wants to boost everyone's score.

CAGW also included a 427–4 vote that requires House members to comply with civil-rights laws that apply to the private sector. But the group's ratings excluded an earlier vote on a more substantive House rule, uniformly opposed by Democratic leaders, dealing with that measure and other congressional reforms such as cuts in staff and term limits for committee heads.

Tom Schatz, president of CAGW, admits his group debated the wisdom of including those lopsided votes, but says the issues were too important to ignore. "If you win something big," he says, "why not [give Congress] credit?"

School Colors

Reaffirming affirmative action

By Ed Carson

"NOT UNLIKE CHEAP BOOZE, THE *Hopwood* opinion is palatable (if barely so) at first impression but leaves an awful aftertaste." That's how the Center for Individual Rights, a conservative public-interest law firm, summarized the first decision on affirmative action admissions policies since *Board of Regents v. Bakke* in 1978.

The case, *Hopwood v. State of Texas*, involved a dispute between the University of Texas Law School and four white applicants who say they were denied admission to the law school's 1992 entering class because of their race. CIR represented the plaintiffs in court.

To meet the school's enrollment goals for blacks and Mexican Americans, a black or Mexican-American applicant could be automatically admitted to the law school with a lower score than a white applicant who was automatically rejected.

On August 19, 1994, Judge Sam Sparks ruled that the differential cut-off scores and a separate admissions committee were unconstitutional. But he said affirmative action is still "necessary," declaring racial preferences in general constitutional. Sparks ruled that the law school did not have to admit the students and was required to pay each only the token sum of $1.00.

On the scope of racial preferences, Judge Sparks relied on *Bakke*, in which the U.S. Supreme Court ruled that explicit quotas were illegal, but that race could be used as a "plus" factor.

Richard Epstein, a law professor at the University of Chicago and author of a book on discrimination law, says this decision "follows the conceit that this is a small problem that can be easily solved."

CIR's executive director Michael Greve agrees. "The only way the law school can continue to meet its enrollment targets," he says, "is to make race a factor that swamps all other variables."

Balance Sheet

By Rick Henderson

Assets

Feeling Chipper. Sematech, the government-industry computer-chip consortium, wants to stop feeding at the federal trough. It asks Congress to end its $90-million annual subsidy by 1997. Why wait to let Sematech declare independence? Cut off the funds now.

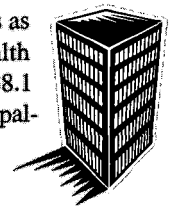
Latin Lion. Brazil's newly elected inflation-fighting President Fernando Henrique Cardoso promises to open the mining, telecommunications, and oil industries to foreign investment. His government will transfer health, education, and welfare programs to the states. Renault, Volkswagen, and Ford plan to open factories. Just after his October 2 election, Cardoso said, "Whoever tries to make decisions against the market will fail."

Crash Test. Transportation Secretary Federico Peña accuses GM of intentionally making unsafe trucks, even though 1973–87 General Motors pickups meet federal safety standards. GM tells Peña to put up or shut up. Sue us!, says the automaker. That beats interminable public hearings about alleged design flaws. Charles Gauthier, the former head of Transportation's defects-investigation office, predicts Peña will lose in court.

Trimming Sails. Escalating tolls and poor management have cut commercial traffic along the St. Lawrence Seaway by 40 percent since the late 1970s. For the first time, reports *The Journal of Commerce*, large business users push to partially privatize the seaway. The Canadian Ministry of Transport, which wants to turn three-fourths of its operations over to the private sector, may gladly go along.

Liabilities

Mitchell's Revenge. Talk about your sore losers. Congressional Democrats promise to consider more than GATT (health care? taxes? Superfund?) during the lame-duck session. Yo, Republicans: Remember gridlock?



Ruled Out. Gridlock may not be sufficient; regulators can bankrupt us as quickly as the revenuers. Proposed Occupational Safety and Health Administration regulations on indoor-air quality will cost businesses $8.1 billion a year. And the impact of expected OSHA rules to deter carpal-tunnel syndrome and other repetitive-motion injuries, says *Forbes*, "will go far beyond the Americans with Disabilities Act."

Trade War. Top federal antitrust enforcer Anne Bingaman declares war on commerce. Bingaman investigates "no-haggle" car sales, part of the secret of Saturn's success. (Great. *Force* us to negotiate with car salesmen.) She also suspects NASDAQ, the over-the-counter stock market, of price fixing. And she refuses to overturn a 1921 agreement prohibiting Eastman Kodak from selling its own film.

Freeze! U.S. companies must stop making alleged ozone-killing chlorofluorocarbons at the end of 1995. Substitutes for CFC-12, used in most air conditioners, don't exist. The feds have slapped a $4.35 per pound excise tax on CFCs, encouraging people to smuggle them into the country from China and Eastern Europe. Industry spokesman Kevin Fay tells the Associated Press, "The excise tax combined with [CFC-12's] rapid phaseout has resulted in black market activity reminiscent of the Prohibition era in the 1920s."

THE MOST DANGEROUS DRUG IN AMERICA IS SILENCE.

Washington's drug policy has been one of the most expensive failures in American history.

But not talking about it is costing us much more than money. Elected officials aren't allowed to say that the emperor has no clothes. It's politically incorrect to suggest that the strategy that has cost us over 100 billion tax dollars just isn't going to work.

The streets aren't safer. The flow of drugs hasn't been stopped. The spread of deadly diseases like AIDS from unsafe needle use has reached epidemic proportions. The truth is painfully obvious, ignoring it won't make it go away.

Thanks to our present drug strategy, the United States has now surpassed some of the most repressive regimes in the world to become the leading jailer outside of the Republic of Russia.

Who benefits? Organized crime barons who fill their pockets from the illegal drug trade, which is estimated at over $40 billion a year.

Who loses? Anybody who gets caught in the middle, including police officers and innocent children. Disputes aren't settled in courts of law, but with automatic weapons in the streets.

BUT IT'S POLITICAL SUICIDE TO DEBATE IT.

When Surgeon General Joycelyn Elders said that the existing drug policy was "worth studying," she was censored. When Attorney General Janet Reno directed a review of mandatory minimum sentences for minor drug offenders, she was ignored. The silence is deafening. It should be alarming. America isn't becoming drug free...just less free.

WE THINK IT'S MORAL AND SOCIAL SUICIDE TO BE SILENT.

So, whose silence is it? It's yours, it's mine, it's the guy's next door. We can no longer sit quietly by while our nation continues to invest in a policy that clearly won't work. There's got to be a better way.

We all share a deep concern over the problems caused by drug abuse in our society. But the cure has become worse than the disease. There are effective policies that can be implemented today - policies that will make our nation healthier and more humane.

Our objective is to make sure this crucial debate is explored in local and national media and on Capitol Hill. Many of this country's top judges, mayors, law officers and educators have already contributed time and money to help make sure that it does. But we need your support, your voice, your membership.

Right now, we have an opportunity to make memberships work twice as hard. A major funder is willing to match them dollar for dollar. Your membership contribution of $50 or more will bring you information on how our campaign for a sane drug policy is progressing and how you can participate. It will also bring you a year's subscription to our newsletter, a free copy of Friedman & Szasz's thought-provoking book, *On Liberty and Drugs,* and updated information on how you can become more involved.

If it were possible for America to spend its way out of this problem, we would have by now. But, we have always been able to reason together to find better solutions. Isn't it time we broke the long, dangerous silence and found one for this?

It's time for ideas. It's time for change.

THE DRUG POLICY FOUNDATION IS A NON-PROFIT ORGANIZATION THAT PROMOTES OPEN DEBATE ON DRUG POLICY AND PROVIDES INFORMATION ON ALTERNATIVES.

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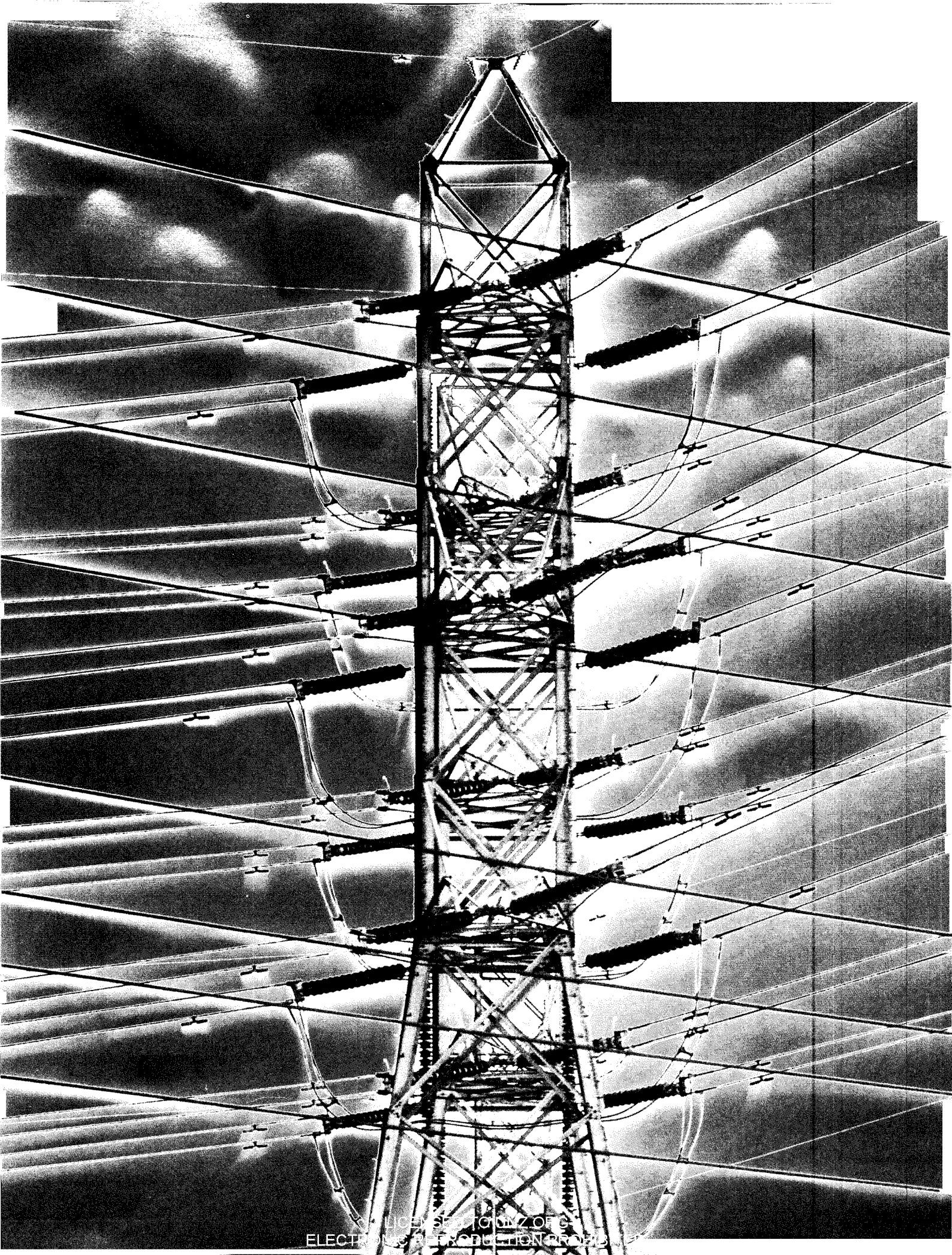


Shock Journalism

The junk reporting behind the power line–cancer connection

by Michael Fumento

Wind shear is one of the major banes of air travel, a killer held responsible for causing 18 crashes and 575 deaths since 1970. Aviation authorities have recently found a way to combat this menace through Terminal Doppler Weather Radar, which can provide precious minutes of advanced warning. This radar could have prevented the deaths of 37 passengers in Charlotte, North Carolina, in July. It will be installed now at Charlotte and some 150 other sites around the country.

But two of the nation's largest airports, JFK and LaGuardia on Long Island, won't be enjoying its life-saving benefits any time soon. Politicians and activists have stopped its installation there, since Long Island residents—wrongly convinced that they are already suffering an epidemic of breast cancer—have been terrified into believing that electromagnetic fields (EMF) from the radar would afflict the area with even more cancer.

This terror—indeed, most of the nation's terror of EMF in general—can be readily traced to one person. If and when a plane crashes into Long Island because of wind shear, you should know who is responsible. Meet Paul Brodeur.

Brodeur is a reporter who has made his career by digging up massive conspiracies. He wrote a book on asbestos, *Outrageous Misconduct*, that contributed greatly to spreading the national asbestos scare. But he has devoted the latest years of his life to trying to prove that EMF from radar stations and especially power lines are "the most pervasive—and covered up—public health hazard Americans face." Like *A Nightmare on Elm Street*'s Freddie Krueger, Paul Brodeur keeps coming back, most recently in his 1993 book *The Great Power-Line Cover-Up.*

Clearly, many think highly of Brodeur. His articles have won many awards, including the Sidney Hillman Foundation Award, Columbia University's National Magazine Award, an American Association for the Advancement of Science/Westinghouse Sci-

PHOTOS: JONATHAN NOURIOK

ence Writing Award, and an American Bar Association Award. His last installment on EMF in *The New Yorker*, "Calamity on Meadow Street," was a finalist for the National Magazine Award and the influential, albeit politically correct, *Publisher's Weekly* could barely contain its excitement over *The Great Power-Line Cover-Up*, calling it an "important, riveting expose" which "should be on Al Gore's desk as he tackles environmental health problems, and on Hillary Rodham Clinton's bookshelf as she reorders national health priorities." It probably was.

But it's *The New Yorker* and its stodgy reputation that gives Brodeur his true credibility and allows him to rise above the tabloid level. In a periodical that humbly calls itself "the best magazine in the world," Brodeur has published several huge articles on EMF that formed the basis not only for *The Great Power-Line Cover-Up* but also for his 1989 book, *Currents of Death*.

Brodeur might do as well as he does simply because fear sells. When my book *Science Under Siege* was published last year, the producers of *Larry King Live*, fresh from having launched the cellular phone/brain cancer scare, said they thought it might be good to highlight the anti-hysteria side of things by building a show around a chapter in my book on EMF. They asked Brodeur if he would appear on such a show, but Brodeur refused to appear with me. King's producers bumped me, added Brodeur and two other proponents of Brodeur's thesis, and put them all against a single physicist with little or no television debating background.

Brodeur seems to share certain traits with horror author Stephen King, who says that when he feels he's having trouble scaring the reader he just disgusts them with gore. Thus, in the case of one tumor which Brodeur attributes to power line exposure, he treats us to the niceties of brain surgery. "He removed my forehead bone in two pieces," he quotes the victim, "and took out a meningioma—a generally nonmalignant but often fatal tumor—which was the size of a small grapefruit and had got entangled in my optic nerves and stretched them out as fine as ribbon. In order to take out the tumor, he had to sculpt out a small piece of my brain." Brodeur's description goes on and on, literally ad nauseam.

Those who warn of the dangers of EMF exposure want to essentially eliminate that exposure, either through burying all lines in residential areas or by buying up all exposed houses. H. Keith Florig of Resources for the Future estimates that power companies are already spending $1 billion a year to reduce EMF exposure, but that is a tiny figure compared to what they will have to spend if the recommendations of anti-EMF activists become law.

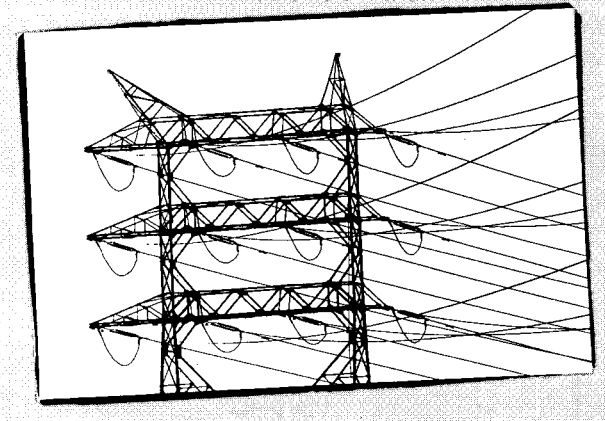
Testifying before Congress last year, Florig calculated that were we to bury all the power lines that expose people to levels of EMF that worry activists, it would cost about $200 billion. That would show up as a nearly $4,000 one-time surcharge on the electric bill of a family of four. Buying out houses near those power lines as an alternative to burying the lines would cost merely $90 billion.

All this might be justified if we were facing one of the greatest health threats known. But the evidence, such as it is, appears to be largely based on fear, conspiracy-mongering, ignoring contrary evidence, and statistical gerrymandering.

A Conspiracy So Immense

The anti-EMF thesis is built around studies showing its biological effects on simple organisms and small animals, along with some studies done on humans. Many researchers think these effects mean nothing. "The solid weight of biological research" argues that electric and magnetic fields should not be able to cause cancer, said British epidemiologist Richard Doll in a *New York Times* interview. Doll, the man given credit for providing epidemiological proof that cigarette smoking causes cancer, said that "for the sort of fields we're talking about, we know they don't damage DNA. The idea that they should cause cancer is bizarre."

Still, as Brodeur repeatedly states in *Currents of Death*, there are "32 published studies demonstrating ELF [extremely low frequency, another term for EMF] effects." What Brodeur doesn't say is that hundreds of studies have been performed in which EMF shows no biological effects. Further, "biological effects" aren't necessarily harmful. As the authors of a report on EMF for the Congressional Office of Technology Assessment noted, "A



Anti-EMF activists want to essentially eliminate exposure. This might be justified if we were facing one of the greatest health threats known. But the evidence of the hazards of EMF appears to be largely based on fear, conspiracy-mongering, ignoring contrary evidence, and statistical gerrymandering.

biological effect is not necessarily a significant health consequence."

However, even a distant possibility of biological effects from EMF makes it hard to dismiss out of hand the possibility that they could cause harmful ones. Thus, numerous epidemiologists have sought out evidence of EMF's harm or lack thereof in real-world situations. The major studies have looked at power-line exposure, since threats from radar microwave emissions are taken much less seriously even among those who fear EMF.

According to Brodeur, the evidence of these power line studies is utterly conclusive. His books would be meaningless if they weren't. As their titles make clear, it's not merely that the weight of evidence says power lines cause illness, but that the evidence is so overwhelming that to deny it is to be engaged in a coverup.

But not even the scientists whose work Brodeur cites are as certain as he is. Epidemiology is a crude instrument, rather like the first radar units. As the occasional Cuban defector who flies into U.S. airspace undetected shows, even today identifying a single plane can be tough. Both radar and epidemiology are much better suited to detecting major problems. Epidemiology can detect strong cancer correlations like smoking and lung cancer fairly readily. But the risk ratios from the childhood leukemia-EMF studies, if they show a correlation at all, are in the area of two to three, meaning a two or three times higher risk of contracting the disease, compared to a 10- to 30-fold difference in cancer risk between cigarette smokers and nonsmokers.

Those small risk ratios indicate that the risk of EMF, assuming there is one, is much smaller than such clear carcinogens as tobacco smoke. And such a small blip on the risk radar screen may prove to mean nothing at all. No one study is definitive. Rather, researchers look at each study the way a professor would look at a quiz. Any student may have a particularly good or bad day, and quizzes may be flawed, but averaged over the course of a semester, enough quizzes provide a fairly good assessment of where a student stands.

In the case of EMF and cancer, there have been so many quizzes that it is best to look at the broad overviews in various government reports rather than focus on each one individually.

In May 1989, the OTA released a report, one line from which appeared in a multitude of articles and in Brodeur's book *Currents of Death*: "As recently as a few years ago, scientists were making categorical statements that on the basis of all available evidence there are no health risks from human exposure to power-frequency fields. In our view, the emerging evidence no longer allows one to categorically assert that there are no risks."

Unfortunately, most of these articles and Brodeur's book neglect to complete the sentence: "...but it does not provide a basis for asserting that there is a significant risk." For those whose jobs expose them to EMF, it concluded, "the evidence to suggest that exposure to extremely low frequency electromagnetic fields presents an occupational hazard is extremely weak."

With childhood leukemia, the EMF danger that has gotten the most attention, the OTA report found that "collectively the studies do not provide good evidence that ELF exposure increases the risk of leukemia." Nowhere in Brodeur's work does this line appear. But, they added, carefully hedging their conclusion, "at the same time the evidence precludes categorical statements that no such risk exists."

The British equivalent of the OTA report is considerably more helpful, since it appeared three years later. It looked at 80 surveys of cancer in electrical workers, eight of childhood leukemia, and several of adults exposed in non-occupational settings. This report found that "while there is suggestive evidence of an association between childhood cancer and residential electromagnetic field exposure, the methodological shortcomings of the studies are such that the evidence is insufficient to allow conclusions to be drawn."

Where the OTA report said there was "not enough evidence to judge the possibility of an association" between residential exposure and adult cancers, the British panel took a firmer position: "The data on adult cancers and electromagnetic field exposure are sparse, and available evidence does not suggest electromagnetic field exposure is a risk factor."

At the request of the Department of Labor, which was responding to the Brodeur articles, the Committee on Interagency Radiation Research and Policy Coordination (part of the White House Office of Science and Technology Policy) ordered a review of the literature. Conducted by a panel of independent scientists convened by Oak Ridge Associated Universities, it concluded that "there is no convincing evidence in the published literature to support the contention that exposures to extremely low frequency electric and magnetic fields generated by sources such as household appliances, video display terminals, and low power lines are demonstrable health hazards." It went on to apply relative risk standards in saying that "in the broad scope of research needs in basic science and health research, any health concerns over exposures to ELF-EMF should not receive high priority."

What does Brodeur make of these reports? He ignores the British one in his writings. The OTA one is cited briefly in support of his position in both *Currents of Death* and *The Great Power-Line Cover-Up*. This is notwithstanding that the chief author of the OTA report, Carnegie-Mellon Professor M. Granger Morgan, blasted *Currents of Death* in a review in *Scientific American*.

The Oak Ridge report merits but a few sentences from Brodeur, mostly an ad hominem attack on one of its authors, Dimitrios Trichopoulos. Trichopoulos, suggests Brodeur, has compromised his position because he "had testified as a consultant for Crowell & Moring, the electric utility industry's lead attorneys, at the Scientific Advisory Board meetings in the winter of 1991."

Trichopoulos is the chairman of the department of epidemiology at the Harvard University School of Public Health. His articles in major medical journals have covered the range of epidemiological subjects from hepatitis C to tobacco smoke to breast cancer. But to Brodeur he's just a utility industry sell-out. Brodeur strangely thinks that people form their opinions based on who hires them as consultants, rather than being hired as consultants based on their opinions. If he applied this standard fairly, Brodeur would point out that Dr. Samuel Milham Jr. of the Washington State Department of Health and Social Services,

whose work Brodeur heavily relies on in both of his last two books, was an expert witness for the plaintiffs in a San Diego trial alleging that EMF had caused a serious illness. Brodeur discusses the trial but neglects to mention Milham's role.

The only governmental overview that Brodeur dwells on at all isn't one. That is, it was never released except in draft form. The report composed a large part of *Currents* and showed up on no fewer than 67 pages of *The Great Power-Line Cover-Up*, out of 308 in the whole book. Yet this document was clearly marked "Workshop Review Draft" and had on each page the words "DRAFT—DO NOT QUOTE OR CITE." None of which stopped Brodeur from persistently quoting and citing it. As James Jauchem noted in a critical article in the *Journal of Clinical Epidemiology*, "Brodeur seemed to think that being asked not to cite a draft report was synonymous with a 'cover-up.'"

But that's not the only conspiracy involved, according to Brodeur. An earlier EPA draft had used the term "probable" carcinogen but after internal review downgraded this to "possible," which has no official meaning. (Essentially, anything that hasn't been absolutely studied to death is considered a possible carcinogen.) That, too, said Brodeur, could only have been the result of conspiracy. But according to EPA official Dennis O'Connor, "If we had determined that it was a proven cause of cancer in humans, trust me there would have been pressure in succeeding years to deal with that." The agency sent the report on to an advisory board which turned it back for a number of technical reasons such as the need to look only at peer-reviewed material, according to officials. A completely new draft is scheduled for release next March.

Creating Clusters and Fomenting Fear

In *The Great Power-Line Cover-Up*, Brodeur recounts a press conference held by the head of the Connecticut Department of Health Services's Division of Environmental Epidemiology and Occupational Health and an epidemiologist on his staff. They told reporters that despite the panic caused by Brodeur's "Calamity on Meadow Street" in *The New Yorker*, there was "absolutely no clustering" in Guilford and that the state investigation found "no cancer cluster on Meadow Street."

Brodeur called this conclusion "disingenuous, to say the least." His evidence: "The fact that three of the 29 primary brain and central-nervous-system tumors that occurred in Guilford during those 21 years developed among a handful of people who live in four of five adjacent houses on Meadow Street that are situated near a substation and very close to a pair of high-current distribution feeder lines, together with the fact that a malignant eye tumor, involving a tract of brain tissue, occurred in a woman who had lived in a sixth dwelling, next to a third feeder line, surely suggested that there was a cancer cluster of some significance on Meadow Street."

That this sentence is a grammarian's nightmare may not be coincidental. Brodeur excels at obfuscation. He also excels at what can be called "cluster gerrymandering." In political gerrymandering, the party that runs the legislature carefully draws the boundaries of an electoral district so as to squeeze as many voters from the opposite party into as few districts as possible. In Brodeur's case, he carefully draws his boundaries around cancer cases so that just as many as possible fall into his own self-defined cluster. If it serves his purpose to count only four houses from a distribution line, he will do it. But if there is a cancer in that sixth house, the area being considered will conveniently move out to that sixth house. Using such techniques, it is always possible to find a cluster, even though, as with some gerrymandered districts, you might end up with some rather bizarre shapes.

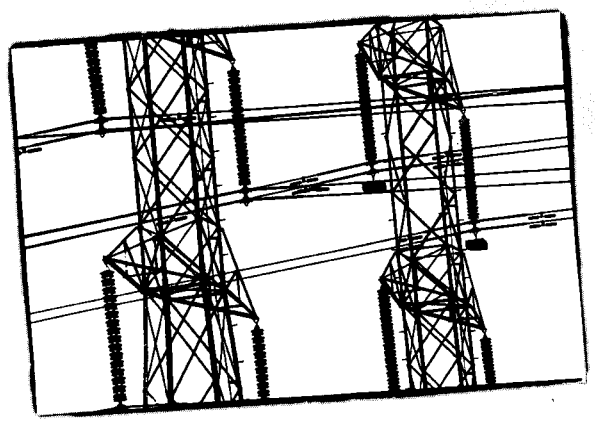
Consider the most important evidence in Brodeur's indictment of microwaves in his 1977 book, *The Zapping of America*. Throughout the book he refers to what he calls an extraordinary rate of cancer at the U.S. embassy in Moscow. The embassy was discovered in the early 1970s to have been bombarded by the Soviets for the previous two decades by microwave radiation for unknown reasons. After *Zapping* came out, a government study found that residents of the embassy were remarkably healthy and cancer-free overall. Looking at causes of death of both embassy males and females as separate groups and even breaking these further down into all causes, cancers only, and heart disease only—six different cohorts—the government study found fewer of all those than one would expect in a similar demographic group and fewer than in comparison embassies. It also looked at adult dependents and dependent children and found lower death rates than would be expected.

How did Brodeur deal with this? He declared the government study "had underestimated the health hazard of microwave radiation at the embassy by failing to point out that the death rate—particularly from breast cancer—was extraordinarily high [he doesn't say how high] among women living in apartments on the third through seventh floors of the embassy during the late 1960s and 1970s, when the irradiation of the embassy had become a source of major concern to the State Department and the CIA."

Note how Brodeur conveniently factors out the incidence (or more importantly non-incidence) of non-breast cancers, and of all non-cancerous ailments. This automatically excludes cancers in children and men, since they rarely get breast cancer. He also ignores all the workers save those on floors three through seven. He doesn't tell us that the embassy has 10 floors, meaning he ignores the first two and last three floors. Finally, he ignores the years prior to the late 1960s, even though the study covers years dating back to 1953. By taking his sharp instrument and expertly cutting out persons without cancer, he has created his cluster.

One key in identifying a legitimate cluster is that the diseases must be related. Every household is periodically struck by some sort of illness. A plausible theory of cluster causation would have to show similar illnesses, yet Brodeur does quite the opposite. He seems to connect absolutely every ailment contracted anywhere near power lines or power substations with EMF.

James Jauchem wrote in the *Journal of Clinical Epidemiology* of "Calamity on Meadow Street" that "in addition to brain tumors, Brodeur seemed to blame exposure to EMF for the following ailments: Osgood Schlatter syndrome [a disease affect-



In political gerrymandering, the party that runs the legislature draws boundaries to squeeze as many voters from the opposite party into as few districts as possible. Brodeur draws his boundaries around cancer cases so that as many as possible fall into his own self-defined cluster. Using such techniques, it is always possible to find a cluster.

ing the tendons of the kneecaps], ganglion and keratinous cysts [small pockets of fluid resulting from inflammation], scoliosis and other spinal deformities, parotid gland inflammation, hypospadias [an abnormality of the penis in which the urethra opens underneath], heart defects, lipodystrophy [a fatty tissue disease], glomerulonephritis [a kidney disorder], strep throat, fever, dark brown urine, pain and swelling in the eyes, swelling of the face, arm numbness, severe headaches, and keratoacanthoma [a disease of the eyes]."

Actually, in *The Great Power-Line Cover-Up*, Brodeur adds a number of other maladies to that list, including bleeding ulcers, benign ovarian tumors, epilepsy, and a growth on the hand merely described as "disabling." In a fit of understatement, Jauchem writes, "Surely it would be difficult to find a scientific basis for linking EMF exposure to this menagerie of ailments."

The Connecticut Academy would seem to agree. In its report it stated that "the diseases reported on Meadow Street were multiple, and there was not a recognizable cluster of any given disease as defined and could be evaluated by procedures of the U.S. Centers for Disease Control. Thus, the Academy concurs with the conclusion reached by the Connecticut Department of Health Services. There is no indication of a recognizable cluster of any type of relevant cancer."

Likewise, Dr. Michael B. Bracken, professor and vice chairman of epidemiology and public health at the Yale School of Medicine, told *The New York Times*, "There are clusters of any kind of cancer," but "in Guilford, it's not even a cluster because the cancers aren't related. These are individual tragedies."

Brodeur dismisses Bracken by pointing out that he had received a grant from the utility-industry funded Electric Power Research Institute of Palo Alto, California, for $2.5 million. Once again, the double standard is in effect: Two of the three American studies cited most often by those arguing an EMF-cancer connection, including Brodeur, were also funded by EPRI. Utilities finance practically all the research on EMF. If they didn't, nobody else would.

This puts Brodeur in a wonderful position. When a utility-funded study finds an EMF-cancer link, he says that the industry's own study has proved his point. When an industry-funded study or person argues against such a connection, he says it or he is untrustworthy because of who funded it.

Foreign Affairs

Scientific attention continues to focus on EMF. One study came out shortly after the Oak Ridge report and received tremendous attention. As Brodeur reported in *The Great Power-Line Cover-Up*, "On September 30th of 1992, the wind went out of the utility industry when officials of Sweden's National Board for Industrial and Technical Development formally announced that they intended henceforth to 'act on the assumption that there is a connection between exposure to power frequency magnetic fields and cancer, in particular childhood cancer.'"

This action was prompted by two studies at Sweden's Karolinska Institute, one of childhood leukemia and the other of occupational exposure and brain cancer. Both claim to have found a connection between cancer and EMF. These studies contradicted two British studies released in 1990 and 1991 that found no such connection, yet the British studies go unmentioned in Brodeur's work.

Indeed, they are virtually unmentioned anywhere in the popular media. A Nexis computer database search a few months after the Swedes made their announcements found that while 81 media outlets mentioned the Swedish studies, only one mentioned the two British ones, even though the British studies appeared in a peer-reviewed medical journal (the *British Journal of Cancer*) while the Swedish study was released directly to the media with no review. Rather than go the usual route of peer review and publication in a medical or science journal, the Karolinska Institute did an end run around the usual careful if stodgy system by simply handing an abstract of their findings over to reporters at a San Diego conference on EMF. Many members of the media appear to be unaware that epidemiological studies often conflict, and simply took—or at least represented in their articles—these to be essentially the final word on the subject.

Though the popular media refer to these Swedish studies as more or less definitive, EMF authorities do not. In a letter to *Sci-*

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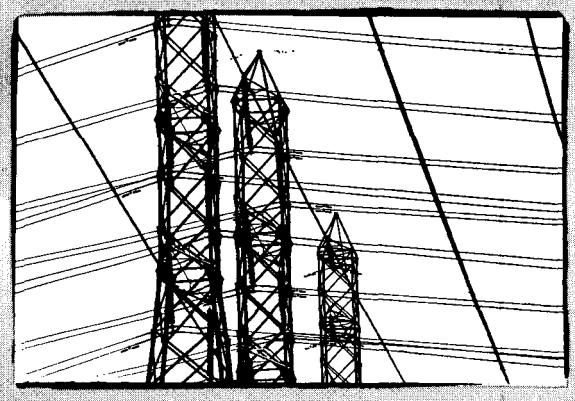

ence in July 1992, the Oak Ridge panel noted glaring inconsistencies between the two Karolinska studies and an earlier Swedish study from 1986.

The 1986 one noted an inverse relationship between EMF and childhood leukemia, for example. On the other hand, it did find a correlation between EMF and childhood brain cancers while the later ones found none. The Oak Ridge panelists went on to find contrast after contrast. Epidemiologists generally believe conflicting positive results should be viewed as negative overall.

In the eyes of an epidemiologist, the inability of each of the other studies to confirm one specific connection lowers the possibility of that connection being real. Gerald Draper, the director of the Childhood Cancer Research Group at Oxford University, pointed this out in an editorial in the *British Medical Journal.* "The possibility that magnetic fields associated with electricity transmission may cause some cases of childhood cancer cannot be dismissed," he wrote, "but the lack of consistency among published studies, and the absence of an accepted biological explanation for such a relation, means that we have to conclude that at present no causal relation has been established."

It's impossible to know just how much EMF exposure a child received, so some system must be used to estimate it. The first study to link childhood leukemia and EMF from power lines was conducted in Denver by psychologist Nancy Wertheimer and her physicist friend, Ed Leeper. Unable to actually enter people's homes, they instead measured the distance between distribution lines and the homes themselves.

Using what they called wire code methodology, they and some of their successors, such as Dr. David Savitz of the University of North Carolina, found increased cancers with increased exposure. But Savitz, using spot measurements in the house, found that with this method there was no correlation between cancer and exposure. Dr. Stephanie London in Los Angeles added yet another method of measurement, hanging a detector around children's necks to measure their actual exposure. She found no correlation between actual exposures and EMF, nor between spot measurements and EMF, but did find a correlation using the Wertheimer-Leeper wire code. Similarly, Dr. Anders Ahlbom, chief researcher behind the Swedish studies, found that *actual* EMF measurements in homes, as opposed to his calculations of the exposure he thinks the individuals received over several years, correlate to a *reduction* in leukemia risk.

It may be that the coding system is truly best. It may be, as Savitz has suggested, that present-day spot measurements of EMF can't reflect fluctuations in fields that might have happened over time. But to say that London and Ahlbom have found an EMF-cancer correlation, as Brodeur and others have said, is to simply assume that the wire code is the best measurement tool.

No one knows if that's the case, however. This led Savitz, in his April 1993 overview of EMF studies in the *American Industrial Hygiene Association Journal,* to write "a number of inconsistencies and questions prevent a conclusion that magnetic fields cause cancer, including the failure of measured fields to be as strongly associated with cancer risk as are wire codes."

More recent studies in the October 1993 *British Medical Journal,* larger than the Swedish ones, also cast doubt on the EMF-cancer link. Just as the media ignored foreign studies prior to the Swedish ones and downplayed the negative associations in those studies, they likewise ignored these, from Sweden's neighbors, Finland and Denmark. Both were vastly larger than the Swedish one. The Danish one had 1,707 children with tumors and almost 5,000 controls, while the Finnish one followed essentially the entire child population of the country, over 150,000.

The Finnish study found no statistically significant correlation between EMF and all types of cancer combined or any individual cancer, except when it then broke the individual cancers down by gender, when it found a correlation to high EMF exposure and nervous system tumors in males. That correlation stood on the finding of three tumors in a single boy. By changing the analysis to per-patient instead of per-tumor, even that connection disappeared.

But What If?

Ironically, one of the solutions that occur to most people concerned about EMF—placing themselves further away from the

source—could theoretically make things worse. That's because some of the studies finding positive EMF-cancer correlations indicate that low levels of exposure are worse than higher ones. This seems strange, because the usual rule of toxicity is the more exposure, the worse off you are. As one Carnegie-Mellon researcher, Indira Nair, explains, our conception of what causes cancer is based on our observation of chemical and ionizing radiation, such as that from X-rays or atom bombs, harm inducers. Assuming EMF are harmful, they would be inducing harm in a completely different way, by interfering with the timing of certain cell operations rather than by tearing apart molecules as carcinogenic chemicals do.

So when Paul Brodeur makes one of his television appearances with a gaussmeter (which measures EMF emissions) and urges viewers to get their own and avoid high-emission areas, even assuming his claims of the hazards of EMF are true, he would still be giving useless or even dangerous advice.

There are plenty of reasons to doubt an EMF-cancer link, as presented above. But even if it is true, what is the worst case scenario? Neighborhoods and schools exploding with cancer and other illnesses that Brodeur describes? Hardly. Sweden, with a population of 8 million, has about 70 cases of childhood leukemia a year. Dr. Ahlbom, chief author of the Swedish study that Brodeur so heavily relies on, nonetheless told *The New York Times*, "We're debating whether or not at most one childhood leukemia per year out of those 70 might be attributed to high voltage power lines." Sweden's population is about one 30th that of the United States, so that one Swedish leukemia would extrapolate to 30 American ones. Childhood leukemia is curable about 70 percent of the time, meaning the Ahlbom formula would attribute nine American children's deaths to power line–induced leukemia.

Dr. Jørgen Olsen, author of the aforementioned Danish study, also said that even if power lines did cause cancer, EMF would be responsible for "one case every five years in Denmark, which has a population of five million." That figure, extrapolated to the United States, would be about 10 cases a year, and three deaths.

Further evidence that the number of childhood leukemia cases caused by EMF in the United States, if any, is quite tiny is the utter lack of any correspondingly large rise in leukemia cases with the 438 percent increase in per capita electricity use in this country from 1950–87. While there has also been an increase in per capita childhood leukemia cases reported nationally during this period, it is less than one 10th the rate of increase of electricity use, and most or all cases may be due to more complete reporting. Connecticut's tumor registry, the first truly comprehensive program in the country, has seen virtually no increase in childhood cancers overall or childhood leukemia specifically.

Reluctant Sources

The scientific debate about possible EMF risk is ongoing. But it is those on whom Brodeur depends for scientific backing who are most critical of his writing, presumably because they feel their work is being misappropriated.

To read Brodeur, you would think Sam Milham has provided the smoking gun linking worker exposure to EMF and cancer. Yet the *Worcester* (Mass.) *Sunday Telegram* cited Milham as saying, "My mind is still open on whether the general public has a significant risk." But, he said, "to put things in perspective, I don't think the risk is an inordinate one. In other words, a whole lot of cancer can't be related to electric fields and power lines."

David Savitz is probably the best-known EMF epidemiologist. He authored a Denver study linking power lines to childhood leukemia and is cited repeatedly in *The New Yorker* and *Currents of Death*. Brodeur writes, "Far and away the greatest blow to the effort of the utility industry to deny that 60-hertz electric and magnetic fields could pose a health hazard came on November 20, 1986, when Savitz and his colleagues announced the results of their long-awaited...study."

But Savitz panned *Currents of Death* in his review in the *Journal of the American Medical Association*, writing: "If held to the standard of a balanced, scientific review of the evidence, *Currents of Death* simply fails. There is little evident attempt to separate legitimate criticism of the scientific evidence suggesting health harm from irrational resistance based on the implications of that evidence. Personal or institutional bias is invoked as the only possible reason for failure to accept what the author (but few others) considers irrefutable evidence. Deficiencies in some studies are not mentioned, while contradictory evidence receives strong criticism."

Indeed, in response to the Brodeur EMF scare, Savitz felt compelled to issue an open letter to "Persons concerned about reports of electromagnetic fields and childhood cancer." In it, he stressed the inconclusive results of his study and stated that "interest or concern may be justified, but our study is not sufficiently convincing to warrant drastic action by homeowners."

That statement, like Milham's, has never made it into any of Brodeur's works.

Each child's death is a tragedy, but there are many potential tragedies parents must worry about that are both far more certain and far greater than EMF exposure. Each year, 2,000 people between the ages of 5 and 14 are killed in traffic accidents, with 120,000 injured and often crippled for life. Most of these deaths and injuries could have been prevented through use of safety restraints. Trichopoulos, the Harvard epidemiologist, notes that it doesn't take much imagination to realize it is far easier and less expensive to reduce that figure than to try to reduce a number approaching zero to an even lower number. Ahlbom himself has said, "That's the type of information that's very difficult for people to grasp. People just think, 'It's a risk, and if it's a risk it must be significant.' That's not the case." He added, "Getting across how small these numbers are is extremely difficult." Especially when a crusading reporter at an influential magazine has made it his life's ambition to do just the opposite.

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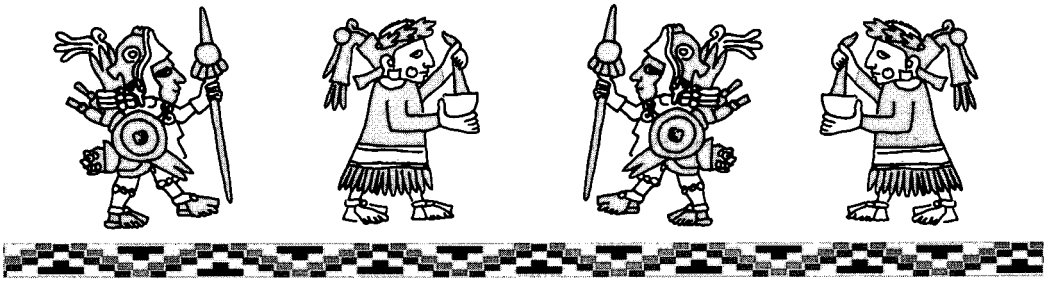
T·H·E CHILDREN O·F COLUMBUS

From violent conquest to common culture

By Mario Vargas Llosa



The novel was forbidden in the Spanish colonies by the Inquisition. The Inquisitors considered this literary genre as dangerous for the spiritual fate of the Indians as for the moral and political behavior of society, and in this, of course, they were absolutely right. We novelists must be grateful to the Spanish Inquisition for having discovered, before any critic did, the inevitably subversive nature of fiction. The prohibition included reading and publishing novels in the colonies. Naturally, there was no way to prevent a great number of novels from being smuggled into our countries and we know, for example, that the first copies of *Don Quixote* entered America hidden in barrels of wine. We can only dream with envy about the kind of experience it was, in those times, in Spanish America, to read a novel: a sinful adventure on account of which, by daring to abandon yourself to an imaginary world, you had to be prepared to face prison and humiliation.

Novels were not published in Spanish America until after the Wars of Independence. The first, *El Periquillo Sarniento*, appeared in Mexico only in 1816. Although novels were abolished for three centuries, the goal of the Inquisitors—a society exonerated from the fictional disease—was not achieved.

They did not realize that the realm of fiction was larger and deeper than that of the novel. Nor could they imagine that the appetite for lies—that is, for escaping objective reality through illusions—was so powerful and rooted in the human spirit, that, once the novel as a medium for satisfying that appetite was gone, the thirst for fiction would infect, like a plague, all the other disciplines and genres in which the written word could freely flow. In repressing and censoring the literary genre specifically invented to give "the necessity of lying" a place in the world, the Inquisitors achieved exactly the opposite of what they wanted. Theirs was a world without novels, yes, but also a world into which fiction had spread and contaminated practically everything: history, religion, poetry, science, art, speeches, journalism, and the daily habits of people.

We still are victims, in Latin America, of what we could call "the revenge of the novel." We still have great difficulty in our countries in differentiating between fiction and reality. We are traditionally accustomed to mix them in such a way that this is, probably, one of the reasons why we are so impractical and inept in political matters, for instance. But some good came also from this novelization of our whole life. Books such as Marquez's *One Hundred Years of Solitude*, Cortázar's short stories, and Roa Bastos's novels would not have been possible otherwise.

The tradition from which this kind of literature sprang, one in which we are exposed to a world totally subverted by fantasy, began, without doubt, with those chroniclers of the conquest and discovery that I read and glossed under the direction of that great historian of Spanish America, Raul Porras Barrenechea. Whenever Porras Barrenechea spoke, history became anecdote, gesture, adventure, color, psychology. He depicted history in a series of murals which had the magnificence of a Renaissance painting, and in which the determining factor of events was never impersonal forces, the geographical imperative, economic relations, or divine providence—but rather the case of certain outstanding individuals whose audacity, genius, charisma, or contagious insanity had imposed on each era and society a certain orientation and shape.

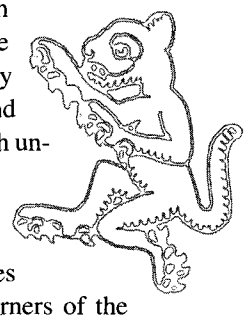
I have been thinking a lot about Porras Barrenechea lately, particularly since 1992, which was, as you might remember, a commemorative year, the Quincentenary, which recalls a turning point in world history. Some would rather forget, but I think we ought to remember that just about 500 years ago Christopher Columbus's caravels first set sail and arrived on what would be called America, initiating waves of European and African immigrations. It is appropriate to reflect upon Columbus's voyage and its aftermath because just about everything good, and some of the bad, that has happened ever since has its roots in this episode. It shook up geography, economy, religion, morality, and the imagination of humanity; and it changed the course of history like probably nothing before it except, perhaps, the biblical flood.

Jorge Luis Borges once wrote regarding patriotism that "only affirmations are tolerated." Regarding the Quincentenary, it seems only contradictions were tolerated. A heated discussion preceded the Quincentenary, during which some rejected the idea of a commemoration wholesale, while others were willing to agree to it provided it served primarily to publicize the pillage committed by discoverers, conquistadors, and colonizers. The Quincentenary produced a curious controversy, with prosecutors of all shapes and sizes but few defenders.

Some of the harshest detractors have been Spaniards and Portuguese who have raised their angry voices to claim there is nothing to celebrate in the arrival of Columbus *to* America because it was an imperialistic enterprise. Catholic priests and theologians are the leading critics of what my school textbooks in the 1950s had called "the propagation of faith and the extirpation of idolatry by missionaries," a statement not even the most absent-minded conservative would dare to say in public today. All celebrations of the Quincentenary appear to have been burdened with hidden feelings of guilt and bad conscience.

This should not surprise us. Our age may be one of tremendous events, but it is also one of intellectual confusion. It is an age that has witnessed the collapse of the bloodiest regimes in history, and the eruption of liberty in societies where it never existed before, or where it was but a pale, elusive fire. But it has also witnessed the perversion of common sense and the assailment of values and reason by ideology. Ideology has become the lay religion of our time, and its dogmas, stereotypes, commonplaces, and excommunications continue to contaminate the intelligentsia of the Western world. The condemnations, the discomfort, and the silence of so many intellectuals on both sides of the Atlantic concerning the Quincentenary can be explained by the fear of praising the moral or material achievements of our democracies, and thereby losing the "politically correct" credentials so necessary for success in the cultural establishment of the First and Third Worlds. The Second World, the Soviet Union and its satellites, failed and collapsed precisely because ideology had moved beyond the musings of individuals to become the reason of state. Prominent intellectuals continue to cast a shadow of doubt and skepticism on liberty and democracy, but this is an aberration. Liberty is nothing to be ashamed of. It ought to be cherished with the fervor of those who have lost it, or have just regained it. Like the young people of the former East Germany who in 1989 tore down the wall in Berlin, one of the tasks for men and women of the new generation is to tear down the ideological walls of the prison houses of thought and culture still prevalent in so many free nations.

The arrival of Europeans in those lands—let us say it without an inferiority or superiority complex, and without bringing in historical exorcisms—is the greatest event in the history of America, Europe, and I would dare say, the world. Modernity began with the odyssey of Columbus's three fragile and legendary boats and with the handful of adventurers who sailed through uncharted waters in search of a new route to India. They boggled the European mind by stumbling into a fourth continent with highly developed civilizations. After 1492, the histories of many peoples scattered and isolated from each other in all corners of the world became one single, interconnected, and inseparable history. The slow, daunting, grandiose, and irreversible march of



humanity towards universal civilization was set in motion.

There are many ways to broach a subject of such massive import. One can start at the beginning, like José de la Rada y Gamio, the fearless historian who began his biography of the poet Mariano Melgar with the Almighty's creation of the universe. He summarized the first seven days and continued chronologically with Adam and Eve, the earthly paradise, the apple, the serpent, and so on. By the time he got to the birth of his hero near the end of the 18th century, he was mentally and physically exhausted. I will not rehearse this method now, but will choose instead a less comprehensive and more personal one. I would like to look back on the events of 500 years ago from the perspective of my own experience, from my family history, or rather, from the history of my last name.

After 1492, the histories of many peoples scattered and isolated from each other in all corners of the world became one single, interconnected, and inseparable history. The slow, daunting, grandiose, and irreversible march of humanity towards universal civilization was set in motion.

The name Vargas—my father's—arrived in South America with the first wave of Spaniards, those intrepid men led by the conquistador Francisco Pizarro who scaled the Andes and encountered the Inca civilization. The Vargases came from Extremadura, one of the poorest regions of Spain, and took their name, as was then customary, from the feudal lord of the region, on whose lands they worked as farm hands.

Humble and ignorant, many of them illiterate, but fierce as the times they were braving, they became protagonists in all the breathtaking events that characterized this adventurous and violent encounter of worlds and cultures. A Vargas was among the handful of conquistadors who set eyes on Atahualpa, the last emperor of the Incas, as he was drinking *chicha*, a corn-based liquor, from a skull. Rumor had it that it was the skull of his half-brother Huascar, whom he had executed in a bloody civil war. The next day, on the Plaza of Cajamarca, the conquistadors ambushed the Incas and dealt the fatal blow to the empire.

No sooner had the empire fallen than the conquistadors became involved in bitter and bloody conflicts. Many were killed in civil wars, others in uprisings. But many survived and spread throughout Peru and beyond. Centuries later, the name Vargas would become quite common. My paternal family is a stream from this vast network of rivers.

I was never particularly interested in the genealogy of my family, a large and sometimes unruly tribe. I was, however, quite interested in individuals and in none more than in Don Marcelino, my grandfather, for whom I felt uncontrollable affection. At home his name was taboo, and therefore a myth. He had been a faithful supporter of the liberal leader Augusto Duran, whom he accompanied in countless uprisings, guerrilla wars, imprisonments, and exiles. My grandmother had to work wonders to feed her five children. In his old age, the impulsive Marcelino crowned a life of irresponsibility when he fled his home with a native woman who wore traditional Indian dress. He finished his days with her, far away from us, as the master of a railway station in a remote post in the Andes.

Llosa, my mother's last name, made its way to America in the 17th century, about 100 years after my father's. Llosa was a military bureaucrat. He came from Santillana del Mar in Spain, a spotless little town in the mountains of the Bay of Biscay, and settled in a city in the south of Peru where I was born. He left many descendants who stuck stubbornly to the native soil: priests, nuns, judges, professors, poets, a few madmen, and a couple of military officers.

My grandparents knew every detail of the trials and tribulations of the Llosa family. It was a sheer delight to hear them tell so many tales and anecdotes during my childhood. I remember one story about a young officer, a hero of the war with Chile. And another about an inventor whose experiments caused floods, unintended demolitions of buildings, and the bankruptcy of a company that took his inventions seriously. There was also one about a young woman who was going to enter a cloister when she met and fell in love with Dunquer Lavalle, a composer with whom she led a bohemian life which ended in tragedy.

But the anecdote that fired my imagination and kept me up at night is one I made my grandparents repeat over and over again. It was the story of a relative who told his wife and children he was stepping out for a moment before lunch to buy a newspaper in the arcades of the Plaza de Armas, the town center. They did not hear from him again for 25 years, when they received a letter from France announcing his death. "Why did he go to Paris?" I used to ask my grandmother. "Why else? To become corrupt!" That was, I believe, the origin of my fascination with French culture.

My story, I am sure, is not unusual. South Americans tend to have Spanish, Portuguese, or British ancestors. Many have ancestors stemming from more recent European migrations from Italy, France, Ireland, Germany, Central Europe, and elsewhere. For 500 years the Indians, the Europeans, and the Africans (who arrived in America with the Spanish conquistadors) have mixed to such an extent that most individuals have ancestors of different origins. I hope that this process, *mestizaje*, as we call it in Spanish, continues. Mestizaje has been faster in countries such as Paraguay and Mexico and slower in Peru and Bolivia. It has been extremely slow in the United States and Canada. But it has been taking place throughout the continent. In South America, it has been so systematic that all European families who have

settled in America have some Indian or African background by the second or third generation. Mestizaje works both ways. It would probably be impossible to find "pure Indians," if it makes sense to use the expression at all, because one would need to search for them like a needle in a haystack in the roughest and most remote areas of the Andes, or in the jungles of Central and South America. They exist, but they are a very small minority.

One must understand mestizaje in a literal sense, of course, but it is also a psychological and a cultural fact. Let me illustrate the point with an example. There is a way of being Spanish, open and direct, which any Peruvian or Mexican would find disturbing, even offensive. Where a Spaniard may say "no" we are likely to say "yes...but." We speak in diminutives to dilute conviction. When we express ourselves, we take for granted that the best way to get from point A to point B is not a direct line, but a curve, or better yet, a spiral. We believe we are being thoughtless or impolite when we do not color our statements with doubts, when we do not express ourselves with a measure of restraint. Whether we are Indian, white, black, mulatto, or *mestizo*, when we Peruvians or Mexicans speak, we are enacting the rituals, the scrupulous and indirect forms of interaction of the Incas, Aztecs, and other pre-Columbian cultures.

Those who express dismay about the cruelties of the conquistadors against the Incas and Aztecs have good reason to feel solidarity with peoples who suffered. They should be equally outraged about the cruelties of Incas and Aztecs against the thousands of peoples they subjugated.

But the Indians have also adopted many customs and beliefs that the Europeans brought to America. From social organization to music and dances, from festivals to religions, most practices—and even the native languages—have been profoundly affected by institutions and behaviors brought to America from Europe. Obviously, our population is not a homogeneous one, but mestizaje is irreversible. And because it represents the essence of modern culture, any attempt to slow it down is as useless as it is senseless.

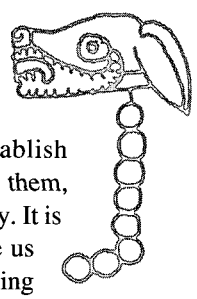
Racists often attempt to cover up this reality. And racism is a human stupidity from which, I am sad to say, neither Anglo nor Latin America—nor any other part of the world—can be exonerated. Prejudice against the Indian, the black, and the Asian is expressed in a thousand ways, some blatant, some subtle, some crafty. One of its expressions is the quiet contempt for the mestizo condition. Since economic powers tend to be concentrated in the white minorities, and there are proportionally far too many Indians and African Americans in the most exploited and discriminated sectors of society, it has been commonplace to perceive racism strictly in terms of the rich discriminating against the poor. But this perception is inaccurate because racism, like mestizaje, can work both ways.

And racism has worked both ways in Latin America, especially among intellectuals. In the 1920s there was, in the aftermath of the Mexican Revolution, a polemic throughout Spanish America between "Indianists" and "Europeanists." It was a sorry example of reciprocal racism.

In the heat of the polemic, a distinguished Peruvian historian called for the destruction of all churches and paintings of the Spanish colonial period because he claimed they were foreign to the American reality. With this logic, he would have also called for the banning of the Spanish language with which he made his proposal. Or, for that matter, the English and Portuguese languages as well. And why not other objects and customs that were not around before the arrival of the Europeans, such as the wheel, writing, the horse, Christianity, and so on and so forth? To be consistent, he would have also called for the re-establishment of human sacrifice and of the Aztec rite whereby an emperor was buried with all of his advisers, his many wives, and his concubines.

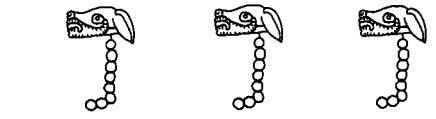
Those who express dismay about the crimes and cruelties of the conquistadors against the Incas and Aztecs have good reason to feel solidarity with peoples who suffered in the past. They should, however, be equally outraged about the crimes and cruelties of Incas and Aztecs against the thousands of peoples they subjugated. But they are not. Academics have been itemizing every single crime committed by Europeans with remarkable meticulousness, but they have not shed a single tear for the thousands, for the hundreds of thousands, and perhaps millions of Indian men and women who were sacrificed in wars of conquest and in Inca, Maya, Aztec, Chicha, or Tolteca ceremonies resembling human barbecues. And yet I am sure that, at least in theory, they would agree that one cannot be selective about moral outrage. Cruelty must be condemned wherever we find it, and it is not fair to elicit sympathy for the victims of a subjugated culture while forgetting the cruelty for which it was also responsible.

I am not arguing against those who wish to remember the arrival of the Spaniards as a bloody period of history in which countless and inexcusable brutalities were committed. I do object, however, to the jump many have made from moral outrage about historical events to the utopian assumption, which sometimes becomes an explicit claim, that we must somehow re-establish pre-Columbian civilizations as the Europeans found them, as though it were possible to defy the course of history. It is a proposal that leads invariably to actions that make us recoil with horror, such as the atrocities of the Shining Path movement in Peru. I also find it unrealistic to forget that all Americans in the north and in the south, regardless of



their color and origins, are products of this saga and its aftermath, for better or for worse.

However, I believe mostly for the better—because those hard, greedy, and sometimes fanatical men brought along to America not only a hunger for wealth, and the unforgiving cross, but also a culture that has been ours ever since. A culture that makes us heirs of Cervantes and of Shakespeare and Adam Smith no more and no less than an inhabitant of Madrid or London. A culture that introduced to human civilization those codes of politics and morality that allow us to condemn powerful nations that abuse the weak, to reject imperialism and colonialism, to stand up for human rights wherever they are violated. The first culture in human history to recognize the rights of our contemporaries and even the rights of our remote ancestors.



Hard, greedy, and sometimes fanatical men brought along to America not only a hunger for wealth but also a culture that has been ours ever since. The first culture in human history to recognize the rights of our contemporaries and even the rights of our remote ancestors.

The ancient Americans would not have understood how someone could question the right of conquest. They would have found it difficult to figure out why men and women criticize their own nation and express solidarity with its victims in the manner of the great Bartolomé de las Casas, the priest who denounced Spanish brutalities against the Indians in the name of a universal morality superior to the interests of any individual, government, state, or nation.

Liberty, I believe, is the greatest contribution of the culture that created the sovereign individual, the owner of rights that other individuals and the state must respect at all times. The culture that gives liberty an unprecedented and primary role in all realms of life has attained its leading role in science and technology, and has produced an abundance of wealth. Liberty, as historian Fernand Braudel has shown, is the driving force of economic and technological progress. The political expression of this culture is liberal democracy, the system which has prevailed over totalitarianism in a decisive way and which is slowly spreading its benefits throughout the world. With a few pathetic exceptions, democracy is today the system that Latin American nations have made their own.

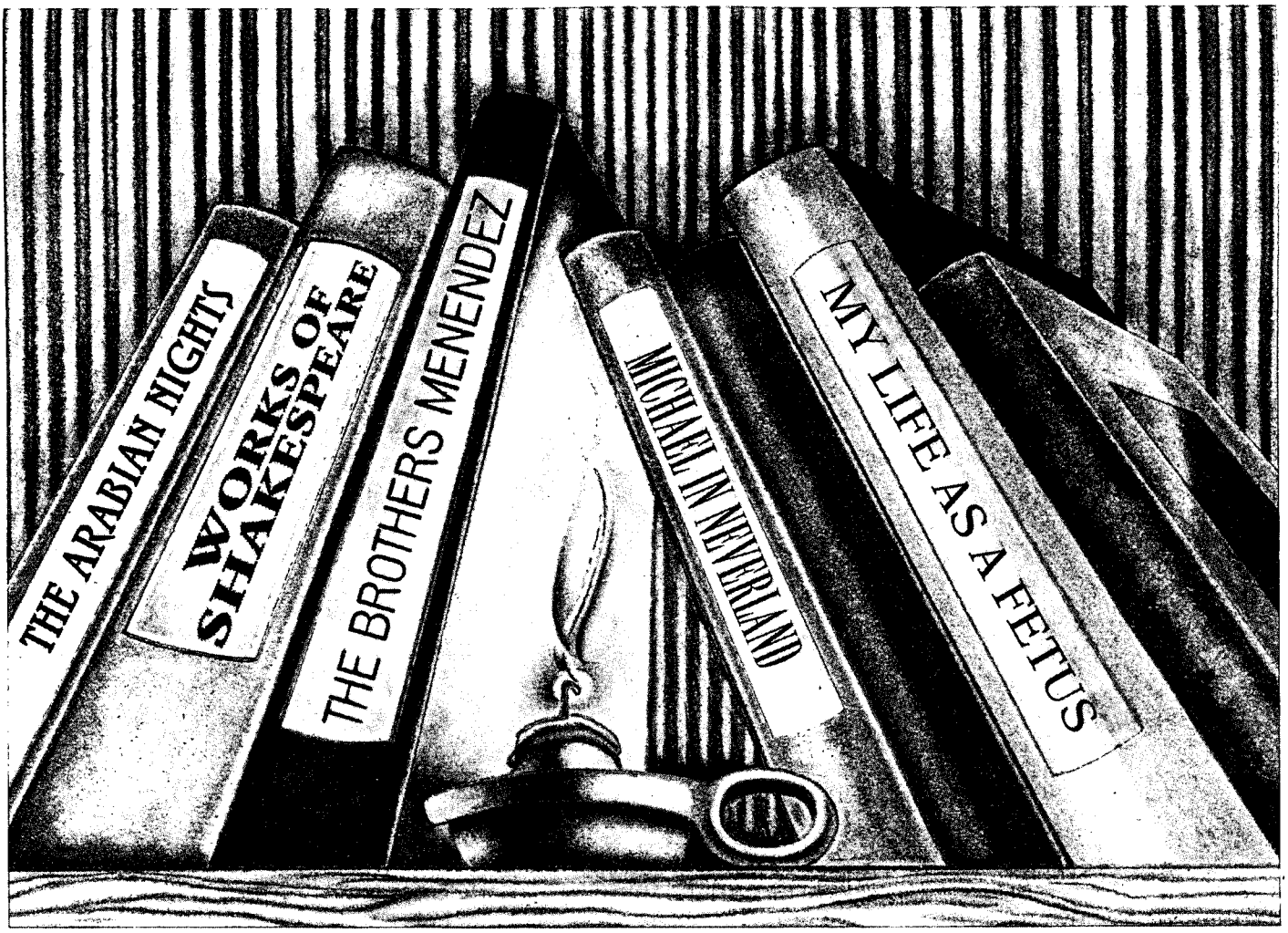
To revive the absurd polemic between "Indianists" and "Europeanists" as happened during the Quincentenary commemoration is to set up a smoke-screen of pseudo-problems in front of problems that are truly pressing. I am referring not to the cruelties the native populations suffered 500 years ago but to the misery they continue to suffer today, when America is made up of independent republics. It is incumbent upon us to assume responsibility for the discrimination that exists today against cultural and ethnic minorities. This is not an historical debate, but a highly topical issue which will shape our future.

It is always a useful exercise to review the past with the eyes of the present in order to learn from error, but it is disingenuous to express horror and dismay for the crimes of conquest while forgetting that violence and exploitation continued. It worsened in countries such as Argentina, Chile, or the United States, where genocides of native populations occurred in the 19th century, and violence continues to occur under our very eyes in nations such as Guatemala, Brazil, and Peru, where struggles between terrorists and soldiers or between gold diggers and settlers have resulted in the mass murder of Indians. These are current and burning issues. The speculation about what would have happened in America if the Europeans had remained in Europe will not allay the misery and suffering of our day.

In fiction, which is my field, it is always possible to pretend that certain historical events did not take place, to project our fantasies into the past, to imagine utopias. But it is not possible or desirable to do that when coping with social and economic problems that are all too real. I must confess I have a hard time finding good answers to my own questions about archaic cultures in the modern world. As Karl Popper noted, people have an easier time identifying human misery than agreeing on the nature of ideal societies that would make everyone happy. I only know that it is not possible to resolve the issue with the impassioned statements or with the ideological stereotypes that invariably lead to counterproductive policies.

Why are indigenous cultures marginal after so many years? Why is their integration so slow? How can we promote their development and modernization? Is Westernization of indigenous peoples a crime, or is it the fastest way to overcome the backwardness and exploitation they are suffering today? Can these cultures become modern and overcome oppression while conserving what are essential or at least fundamental elements of their language, beliefs, and traditions? These are some of the problems I think should be considered instead of empty polemics that pretend 500 years of history can be forgotten, and that the people of America would be happier if the pre-Columbian world were re-established as it once existed. ◆

Mario Vargas Llosa is the author of many books, including the novels Aunt Julia and the Scriptwriter *and* The Storyteller. *His work has been translated into over 20 languages and his new memoir,* Like a Fish in Water, *was recently published in America. In 1990, he ran for president of Peru, winning a plurality of votes in the first round but losing a subsequent run-off election to Alberto Fujimori. This article is an edited version of the 10th John Bonython Lecture, given at the Centre for Independent Studies, Sydney, Australia, on September 9, 1993.*



STORYVILLE

Turning every issue into a drama is warping public policy.

By David Link

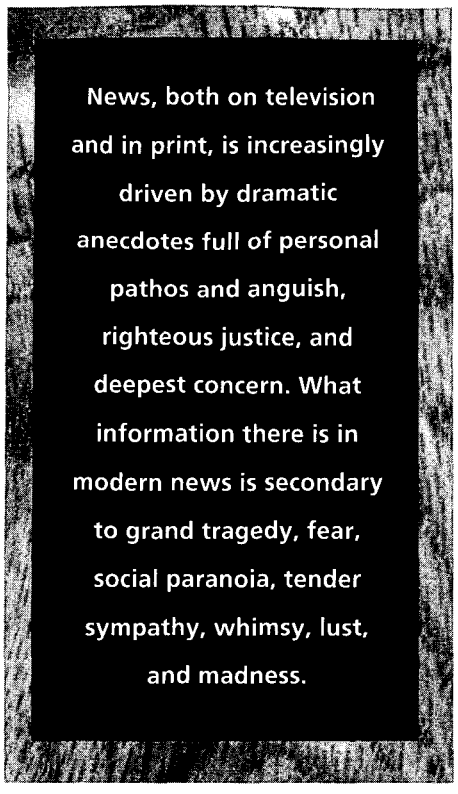
"On February 23, 1994 at approximately 1:00 a.m., Bruce Edwin Callins will be executed by the State of Texas. Intravenous tubes attached to his arms will carry the instrument of death, a toxic fluid designed specifically for the purpose of killing human beings. The witnesses, standing a few feet away, will behold Callins, no longer a defendent, an appellant, or a petitioner, but a man, strapped to a gurney, and seconds away from extinction. Within days, or perhaps hours, the memory of Callins will begin to fade. The wheels of justice will churn again, and somewhere, another jury or another judge will have the unenviable task of determining whether some human being is to live or die."

—Justice Harry Blackmun, in *Callins v. Collins*, No. 93-7054, cert. denied, February 22, 1994

KRISTEN MELLON

"Justice Blackmun begins his statement by describing with poignancy the death of a convicted murderer by lethal injection. He chooses, as the case in which to make that statement, one of the less brutal of the murders that regularly come before us—the murder of a man ripped by a bullet suddenly and unexpectedly, with no opportunity to prepare himself and his affairs, and left to bleed to death on the floor of a tavern. The death-by-injection which Justice Blackmun describes looks pretty desirable next to that. It looks even better next to some of the other cases currently before us which Justice Blackmun did not select as the vehicle for his announcement that the death penalty is always unconstitutional—for example, the case of the 11-year-old girl raped by four men and then killed by stuffing her panties down her throat. ...How enviable a quiet death by lethal injection compared with that!"

—Justice Antonin Scalia


News, both on television and in print, is increasingly driven by dramatic anecdotes full of personal pathos and anguish, righteous justice, and deepest concern. What information there is in modern news is secondary to grand tragedy, fear, social paranoia, tender sympathy, whimsy, lust, and madness.

Most people are familiar with the stand-up comic's rejoinder when a dog outside the club begins howling: "Everybody's a critic." In the exchange quoted above, Justices Blackmun and Scalia reveal a slight alteration to this quip, one that is among the most significant changes culture has undergone in the last half of the 20th century: These days, everybody's a playwright.

But the plays that everyone is writing are not fiction, or not formally fiction. Justices Blackmun and Scalia are not making anything up in their deadly serious debate. Rather, they are telling the truth, but telling it with a particular style, the dramatic style that fiction makers have long used. Like playwrights, both justices are ordering and honing highly emotional details into a pattern they find satisfying. But unlike playwrights, they are arguing public policy using the lives of very real people.

There is certainly precedent for using stories in public discussion, from the hair-raising tales that prompted the Salem witch trials through *Uncle Tom's Cabin*. But today, this kind of hyper-dramatizing is just about the only way we can conduct our debate about public issues. And we have adopted the dramatic style so thoroughly that we don't recognize it as a style, one among many in which public debate may be conducted. News, both on television and in print, is increasingly driven by dramatic anecdotes full of personal pathos and anguish, righteous justice, and deepest concern. What information there is in modern news is secondary to grand tragedy, fear, social paranoia, tender sympathy, whimsy, lust, and madness.

That is not to suggest that drama does not exist in real life. Bruce Callins was a very real person, and the state of Texas's method of carrying out its death penalty is far from imaginary. Justice Blackmun is just stating real, verifiable facts. But so is Justice Scalia, who accurately relates Callins's crime and the brutal and pitiless rape and murder of that young girl. Each justice's skill at telling the story he finds most convincing demonstrates what becomes of information in the dramatic style. A necessary byproduct of drama, and sometimes its entire purpose, is to influence the way facts are seen. Drama may be used to color facts, and sometimes obscure them. But as we let the pleasure we get from storytelling overshadow what is significant about particular facts, it becomes harder and harder to arrive at a reasonable interpretation of information.

Look what happens to the facts in *Callins v. Collins*. Justices Blackmun and Scalia are engaged in an argument over something tremendously important: the morality and propriety of the death penalty. But their debate devolves into trading images of anguish and torment. That emotionalism is the centerpiece of the dramatic style. The justices are wrestling with the practical effects of philosophy as it works itself out in public policy, but as the focus turns emotional and personal, philosophy and public policy fade into the distance. We begin to care about (and are meant to care about) the people whose stories are being described.

Once Justice Blackmun invokes the suffering of Bruce Callins, Justice Scalia has to respond in kind. Drama can only be answered by drama. Sufficiently pathetic imagery is like steroids in sports—once one competitor indulges, competition becomes meaningless unless all competitors join in. Scalia cannot adequately answer Blackmun's highly specific imagery simply by referring to the more dispassionate kinds of logic Supreme Court opinions normally utilize: such arguments as the Constitution's apparent acceptance of the death penalty, the reasonably clear intent of the Constitution's drafters, and public opinion polls that show a large majority of Americans continue to support that ultimate punishment. Logic is not where the argument is any more. Blackmun moves the argument away from abstractions and into the arena of the personal, the individual, the pathetic. Scalia can respond only on those terms.

In this case, as in most, the drama is in the details: Each justice summons highly specific facts he believes support the intellectual argument he finds convincing and leaves out or minimizes others. Blackmun's opening would do well in a movie, with its insistently precise focus. ("*On February 23, 1994 at approximately 1:00 a.m., Bruce Edwin Callins will be executed by the State of Texas...*") Then, like any competent dramatist, he tweaks our sympathy, in this case narrating the way Callins will be erased from memory while the machine grinds on. ("*Within days, or perhaps hours, the memory of Callins will begin to fade. The wheels of justice will churn again, and somewhere, another jury*

or another judge will have the unenviable task of determining whether some human being is to live or die.") Any fiction writer will recognize that this is good dramatic composition.

Scalia's command of dramatic style is no less astute. He gives us the details at the other end of a crime—provoking us with verbs and adverbs loaded with passion ("*ripped by a bullet suddenly and unexpectedly*") and facts guaranteed to evoke compassion (the image of the dead man, left bleeding to death on the floor of that tavern). Further, Scalia's use of understatement is a nicely chosen device to heighten the dramatic effect. ("*He chooses, as the case in which to make that statement, one of the less brutal of the murders that regularly come before us.*")

We are now entering the second full generation that has grown to adulthood with television's relentless storytelling as its context. We are exposed to more dramas every day than any culture in history, and that familiarity has now become an expectation. We aren't just used to drama, we seldom pay attention to anything else.

The facts in *Callins v. Collins* are not particularly unusual in their drama. Just about all cases that make it into the courts involve human injury, conflicting opinions and passions, heated disputes; and the drama is usually most intense in criminal cases. Movies and plays have long exploited the drama inherent in a trial.

Further, the Constitution itself requires a story. No federal court can decide a legal matter unless there is a case or controversy—an actual situation in which some injury has occurred to an identifiable person, or, at the very least, is immediately imminent. Federal courts (and many state courts) cannot issue advisory opinions that merely examine the law as a generalized prospect. Legal issues must be decided based on a given set of facts. Thus, before a court engages in legal analysis, it will most often begin by reciting those facts—the story.

But the Constitution does not require a *dramatic* story. *Callins v. Collins* illustrates how the dramatic style becomes something of an end in itself, heightening passions but resolving nothing. Compare the following statement of the facts, which more fairly represents the way a court deals with the facts of a case, to the ones Justices Blackmun and Scalia wrote. It is from *Brown v. Board of Education* (which consolidated several individual cases), reversing *Plessy v. Ferguson*:

"In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they have been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases, other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called 'separate but equal' doctrine announced by this Court in *Plessy v. Ferguson*."

This statement of the facts is conspicuously devoid of the suffering the law inflicted on the main characters. The tone is distanced, passive, legalistic. There is no adverbial assistance, no invoking of the human plight the individual victims of such laws endured. The point of view is that of the dispassionate Court.

It is not at all hard to imagine a far more dramatic recitation of the facts. *Brown*, in fact, has been criticized for its reliance on sociological materials about the psychological effects of segregation on black children. But it is a world apart from the dramatic narratives in *Callins*. The psychological studies show up in *Brown*, but the children are still only abstractions. A modern judge could easily have found room to recount some of the details that the 1954 Court subsumed into the phrase, "they have been denied admission to schools attended by white children."

We live in an age that is supersaturated with specifics, with pathos, with drama. We are now entering the second full generation that has grown to adulthood with television's relentless storytelling as its context. We are exposed to more dramas every day than any culture in history, and that familiarity has now become an expectation. We aren't just used to drama, we seldom pay attention to anything else.

But the expectation of drama makes public debate much more difficult. Our craving for stories, our perception of ourselves as audience members, undermines our ability to carry out the far more important function that we all have as democratic decision makers. As citizens who have been given a say in making our own political destiny, we need to know the facts about the issues we and our elected representatives have to decide. But the facts we need—the big picture, the statistical patterns, the relevant general principles, the hard data—are deeply buried in the dramatic stories we crave. The problem is not that we can't separate facts from fiction, the problem is we can't separate facts from drama. And it's hard to get facts these days in any other way.

"If only it had happened somewhere else, in some other country, and we'd just read about it in the papers, one could discuss it quietly, examine the question from all points of view and come to an objective conclusion....But when you're involved yourself, when you suddenly find yourself up against the brutal facts you can't help feeling directly concerned—the shock is too violent for you to stay cool and detached."

—Eugene Ionesco, *Rhinoceros*

In Quentin Tarantino's film, *Reservoir Dogs*, one of the characters, a cop, goes undercover to infiltrate a jewelry store robbery some hoods are planning. To pull off the ruse, the cop is

coached by an undercover pal to tell a tale from his fabricated life, called the "Commode Story," to help convince the caper's mastermind that he is really a criminal. The cop's coach reinforces the importance of being specific—it is details that matter. The cop rehearses the story over and over, perfecting his performance, going over the minutiae.

Then, in a restaurant, we see him begin telling the tale to the people he is supposed to reassure. His audience is skeptical at first, but they listen. He draws them in as he relates the background of the drug sale, and his sudden need to go to the bathroom which sets the Commode Story in motion. Unknown to him, he relates, four cops and a drug-sniffing police dog are hanging out in the head. When he gets to this complication, the cop's audience, nodding in sympathy, is fully engaged in the story. They know what it's like.

As the undercover cop reaches the part in the story where he enters the bathroom, Tarantino cuts away from the restaurant where the story is being told, and places us in the very scene the cop is relating. Suddenly, we are in the bathroom, where the cops are prattling away; there is the police dog, a beautiful German Shepherd. The undercover cop, who in the story characterizes himself as a run-of-the-mill drug peddler, enters and freezes as he sees the dog. The dog begins barking. Tarantino then cuts back and forth between the cop telling the tale, and the tale the cop is telling.

It's a daring scene in an even more daring movie, but what is so fascinating about it is that it's about the whole process of telling dramatic stories. The undercover cop is manipulating reality to achieve a specific end, and, even as observers, we get caught up in the manipulation. When we first get into the bathroom, there is absolutely no doubt about whose point of view we are there with—a criminal's. That empathetic response is the power of drama—it alters our point of view and expands our picture of the world.

As this century draws to its close, we tell each other more stories—and as a result have more opportunities to view the world through eyes other than our own—than any other culture in history. On any given day, television alone gives us access to many hundreds of stories, either completely enacted (as in movies or fictional television shows), emerging (television news), or some combination (TV news magazines, daytime talk shows, soap operas). And that does not take into account newspapers, magazines, movies, comic books, plays, the ever-increasing events that amass into history, radio dramas, or the gossip we trade at work. The stock of stories available to nearly every one of us has spiraled into almost uncountable numbers.

Our lives are haunted or charmed, depending on your point of view, by old episodes of *I Love Lucy* and *Hill Street Blues* and *The Twilight Zone*, the brooding tragedy of *The Godfather*, and the whimsy of *Tootsie*. Every day, the news presses us with the immediacy and inflated importance of its reports, and even when we know we're being conned, we play along because we love the rush of a story. Television is more full of Bearded Ladies and Two-Headed Babies than any circus sideshow ever was: the Zsa Zsa Gabor cop-slapping spectacle; the day Phil Donahue wore a dress, or the guy threw the chair on *Geraldo*; O.J. Simpson, Tonya and Nancy, Lorena Bobbitt, Heidi Fleiss, Michael Jackson, Lyle and Erik Menendez.

Our desire to know the story is part voyeurism, part escapism, part genuine human sympathy, but the result is reshaping us. Nancy Kerrigan's pain, as she shouted out, "Why me?" is now part of our national consciousness. We collectively felt her pain, saw the world through her eyes. That fact has consequences.

But there is this difference from a circus sideshow: Today we want more than just a peek at the freak—we want to know what the life of a Bearded Lady is like, what the parents of a Two-Headed Baby were feeling when they learned the news. Our constant immersion in the sea of stories has accustomed us to the idea that everyone's point of view counts. Our desire to know the story is one part voyeurism, one part escapism, one part genuine human sympathy, but the result is reshaping us in some important ways. Nancy Kerrigan's pain, as she shouted out, "Why me?" is now part of our national consciousness. We collectively felt her pain, saw the world through her eyes. That fact has consequences.

"Faith slips—and laughs, and rallies—
Blushes, if any see—
Plucks at a twig of Evidence—
And asks a Vane, the way—
Much Gesture, from the pulpit—
Strong Hallelujahs roll—
Narcotics cannot still the Tooth
That nibbles at the soul—"

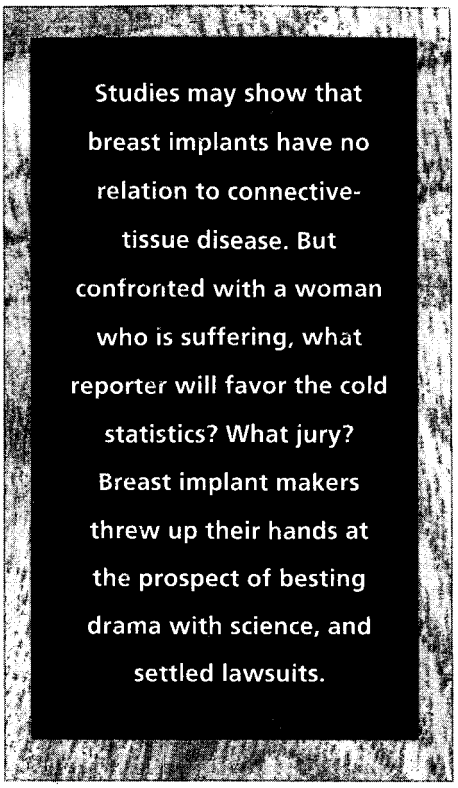
—Emily Dickinson

The dramatic style gets its vitality from the most brutal fact imaginable in a society that believes in science—the fact that certainty is impossible. Dating back to Aristotle and Plato, Western societies have had an obsession with objective reality and a correlative concern with subjectivity. But specifically since Newton, we have become mad about answers, about certainty, about science. Legal systems, theories of psychology, religions, child-rearing guides, and even artistic doctrines have been devised on "scientific" principles. Ambiguity and uncertainty are the enemy of such systems, guesswork the foe to be conquered. Absolute certitude and predictability are seen as achievable goals.

In the face of human diversity and natural mystery, we have a desperate need to know for sure. This is nowhere more visible

than in the law. Virtually every society has a justice system designed to settle unsettled questions, to move us toward a satisfying certainty: Who is responsible for a murder? Who is at fault in an auto accident? Which party in a contract dispute can be held financially liable?

Heightening, then resolving, that uncertainty is one of the hallmarks of drama. In the *Los Angeles Times*, theater critic Laurie Winer posed this rhetorical question: "If we knew for certain that O.J. Simpson was guilty, would we still hang on to every expression?" It was, in fact, the uncertainty of what was happening in the back seat of the Ford Bronco that transformed an otherwise completely undramatic event into a world-class piece of theatre. While news reporters breathlessly characterized the pursuit up Interstate 5 as a "chase," what was really going on was following, not chasing. One reporter said O.J. was "fleeing," but at about 45 miles per hour on an empty L.A. freeway, he was being driven home with a police escort, not dashing for the border.


Studies may show that breast implants have no relation to connective-tissue disease. But confronted with a woman who is suffering, what reporter will favor the cold statistics? What jury? Breast implant makers threw up their hands at the prospect of besting drama with science, and settled lawsuits.

What was dramatic about the "chase" was the possibility that Simpson might do something inside the Bronco. All we could see from the helicopter shots was the Bronco's roof, with a few tantalizing glimpses inside the front seat. What was going on in the back? What had gone on in the back? Was he even still alive? Those questions provided the dramatic uncertainty, not the pursuit itself. People were glued to their sets because they wanted to find out how it would end—what would be revealed when the Bronco finally arrived home?

Uncertainty isn't enough to create a satisfying drama, however. We also expect, in the real world as in dramatic fiction, resolution—a climax and denouement. The longing for finality, for resolution in an ambiguous world, for an *end*, is one of the reasons we go to the incredible expense of having public trials. The public felt cheated when Michael Jackson privately settled the civil charges of child molestation he was faced with. What did the settlement mean? That he was guilty? Innocent but unwilling to go through the public meat grinder a trial would almost certainly have been for the famously reclusive singer? Jackson's settlement deprived us of that final judgment.

Indeed, we are willing to pay an extravagant price for finality. When the juries in the first criminal trial of Lyle and Erik Menendez could not reach a verdict after the months-long trial had ended, L.A.'s district attorney announced with unmistakable firmness that irrespective of the cost, he would mount a retrial, attempt once again to bring the case to a public conclusion. It was not the facts of the murder that were in dispute, but the ultimate question of the boys' guilt or innocence that we wanted finally decided.

Yet even a jury verdict cannot provide certainty. While few jurors have read Ludwig Wittgenstein, every one of them knows by heart his conclusion in the masterful essay, "On Certainty." Certainty is based not on facts, but on our intuition about facts. "Sure evidence," Wittgenstein writes, "is what we *accept* as sure, it is evidence that we go by in *acting* surely, acting without any doubt." Because there is always a residue of doubt about the facts, jurors are asked only to determine whether a criminal defendant is guilty beyond a reasonable doubt, not whether he is guilty without any doubt at all.

But as Justice Blackmun noted in *Callins v. Collins*, some doubts are not obvious. It is those doubts that nag. In other contexts, it might be possible to live with some uncertainty, but when the penalty is death, is any doubt acceptable? The problem is that doubts are always possible. Certainty, if viewed mathematically, is a target like the one Zeno's famous arrow could never reach.

It is that tiny area of uncertainty that the dramatic style exploits. The epidemiological studies may show that breast implants have no relation to connective-tissue disease, for instance. But confronted with a real woman who is really suffering, what reporter will favor the cold statistics? What jury? Facing this reality, breast implant makers threw up their hands at the futile prospect of besting drama with science in court, and settled lawsuits against them for more than $4 billion. As Wittgenstein argued, facts may speak loudly, but they do not really speak for themselves. Even within science, and certainly outside it, analysis is infected by intuition, by subjective beliefs about what facts matter, and about how they matter. Human beliefs can be pushed around, manipulated.

The significance of even the most stable facts can be heightened or undermined by their context. And that is what a trial is about—letting opposing sides orchestrate and fashion facts into one or another point of view. Look at two simple facts. At Nicole Simpson's condominium, police found a bloody glove. At O.J.'s mansion a few minutes away, Detective Mark Fuhrman reported that he found another bloody glove that appears to be a match. At O.J.'s preliminary hearing, these two facts were put into the context of other facts (the oddly parked Bronco, initial blood typing, etc.) to establish a suspicion that O.J. Simpson had been at both sites, and thus could have committed the murders.

But in the weeks following the preliminary hearing, O.J.'s defense put those two incontroverted facts into a very different context, one which supported a conclusion directly contrary to the prosecution's. In his notorious article in *The New Yorker*, Jeffrey Toobin reported that the defense was planning to rely on other undisputed facts, including an internal police department claim by Fuhrman for early retirement, to show he was racist. In that supercharged context, the defense would argue, the two facts

look very different. Fuhrman could have discovered *two* bloody gloves at Nicole's and secreted one which he then planted at O. J.'s to get revenge on a rich and popular black man.

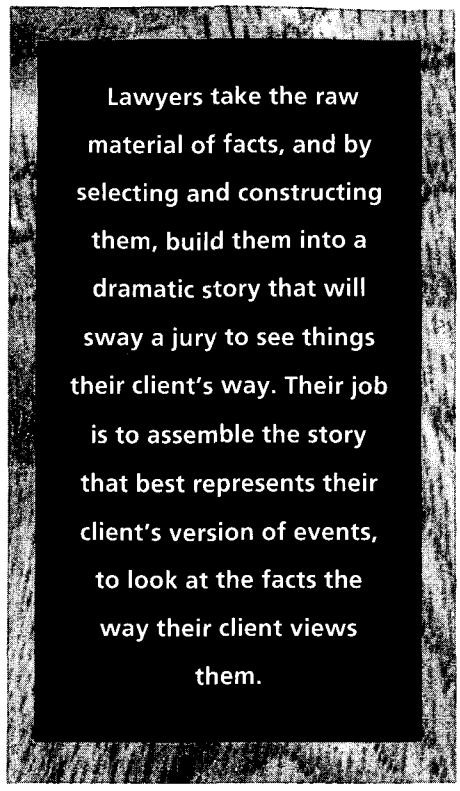
Both stories leave something out. The prosecution's story ignores, or at least minimizes, Fuhrman's on-the-record racist statements. The defense theory downplays Fuhrman's distinguished career after the retirement claim was denied. The defense also has to deny or minimize the obvious fact that perhaps more than a dozen officers were at Nicole's prior to Fuhrman's arrival, none of whom noticed two gloves rather than one.

A lawyer's tools are those of any storyteller: Lawyers appeal to human emotion, try to summon great motivators like injustice, sympathy, pity, terror, even (sometimes) prejudice. Lawyers take the raw material of facts, and by carefully selecting and constructing them, build them into a dramatic story that will sway a jury to see things their client's way. Their job is to assemble the story that best represents their client's version of events, to look at the facts the way their client views them, even if that means engaging in a certain conscious myopia.

Lawyers take the raw material of facts, and by selecting and constructing them, build them into a dramatic story that will sway a jury to see things their client's way. Their job is to assemble the story that best represents their client's version of events, to look at the facts the way their client views them.

But during a trial, law acknowledges the power drama has over facts by placing constraints on the storytelling ability of advocates. Lawyers must tell their client's story within the confines of due process and the rules of evidence to ensure that the jury will decide the case based on relevant and material facts. Lawyers are given wide leeway, but some facts are excluded from the jury's consideration because their contribution to one side's story, while emotionally powerful, may stray too far from legal relevance or plain reliability. It is the loss of this control that Judge Lance Ito is so concerned about in O.J. Simpson's case. Unlike lawyers, the media are not restrained by the constitutional and evidentiary boundaries that apply inside the courtroom and can report any version of the story that strikes their fancy, even the most unsubstantiated and inflammatory hints or rumors.

That problem is heightened in the court of public opinion. As in the media coverage of the Simpson trial, there are no rules of evidence, no canons of due process when we debate issues that make it onto the public agenda. As Jonathan Rauch has most persuasively argued in his book *Kindly Inquisitors*, the First Amendment is, and must be, pretty much an anything goes proposition. That means arguments about public issues may be unfair, irrational, feeble, deceptive, or even outright lies. Whatever works, as political consultants now so coolly shrug. One good emotional depth charge, one compelling story, can explode any sense of objective reality and send public policy spinning out of control.



"I can't support this scientifically, but I know it anecdotally..."

— Daniel Schorr

To merely invoke the name of Polly Klaas is to call her tragic story to mind, the kidnapping out of her own bedroom, and later, her merciless murder. What happened to Polly Klaas was inhuman by any standard. What her family suffered, no family should have to endure.

But while there is certainly reason to sympathize with Polly's family for their loss, this tragic episode is a decisive illustration of how stories obscure real facts. Intensely personal stories are perhaps the most effective way we have to make facts irrelevant. Every injustice happens one person at a time, even if that one person is completely atypical.

Because of the highly emotional nature of the crime, and because of the media's relentless attention, this one kidnapping and murder came to stand for Crime. While the statistics showed that the crime rate in certain, isolated categories (mostly crimes committed by young people) was higher than in previous years, on the whole crime was down—particularly the kind of violent crime that occurred in the Klaas case.

Despite the statistics, the Polly Klaas drama drove public policy. Because of its intense emotionality, it expanded beyond its own borders. It became everybody's problem, though what the specific problem was was a little vague at first. When the problem was finally defined as "murderers get out on parole," a solution could be devised ("three strikes and you're out" legislation) and enacted. All because of a story.

But at exactly the moment that "three strikes and you're out" became the party no legislator wanted to miss, a contrary story was unfolding in the press. In Singapore, 18-year-old Michael Fay was caught spray painting cars and was sentenced to receive six strokes across the bare buttocks with a wet rattan cane, later reduced in a political compromise to four.

While on its face Fay's story does not have the life-and-death emotional appeal of Polly Klaas's, the media found it equally compelling and tried to whip up a similar sense of terrible injustice. The case became an international incident. Although the American public was generally unsympathetic to Fay, the media resolutely focused on the caning, presenting it as something just short of the death penalty. Every television news organization had footage of a martial arts expert whacking the hell out of something, footage accompanied by voiceover narration about how canings slice the skin, draw blood, lead to fainting. We looked at the massacred object before us and were implored to imagine the beautiful young Fay's suffering, St. Michael of the Cane. Fay would be scarred for life, it was urged, both physically

and emotionally. The caning would forever haunt him. How could the government of Singapore do such a thing? It was just a small infraction, after all. Why should the boy's punishment be so cruel?

As we know now, Fay survived the brutality and lived to profit from it. What is important here, though, is that in both the Fay story and the Klaas incident, news organizations had no allegiance to neutral facts; their loyalty in both cases was to *drama*.

Think about the stories the media did not tell, but could have. The Fay story could easily have been presented within the Klaas framework: If punishment is severe enough, it will deter future crime. In fact, that appears to be the framework in which most Americans saw the story. It would have been harder to present the Klaas story within the Fay framework (let's have a little sympathy for the defendant), but that story is not unheard of, as the Menendez brothers know very well.

There is no better example of the way the dramatic style now suffuses American society than abortion. The issue of abortion was established fully within the dramatic style sometime in the '70s, and it has flourished ever since as the most dramatic and polarized public-policy debate in modern America.

Within the opposite story's framework, however, neither story would have sufficient capacity to stir up emotions. Presenting the Fay caning as an appropriate punishment lacks drama. Suffering has more emotional appeal than a single, quick act of well-deserved discipline. Similarly, sympathy for the defendant in the Klaas case was a little hard to muster; as a story, it was much more effective if you focused on Polly as the lead character.

Dramatic stories obscure facts and broader contexts by concentrating on a single point of view. That focus displaces other aspects of the story. In reporting the tale of Holly Ramona, who believes she recovered long-dormant memories of child abuse by her father when she was a young girl, the *Los Angeles Times Magazine* made this remarkable statement: "Father-daughter incest, once believed a rarity, is now said to occur in 1% to 2% of households." As the absolute number of human beings increases, words like *rarity* lose all meaning. Holly's story, like every story, is its own statistic; every story counts, and must be acted on. Something that happens 1 percent of the time is now more than rare, it demands our attention as a nation. And while there is no doubt of the gravity of incest, our national resources are now demanded for hundreds of thousands of things that happen 1 percent of the time, because the stories are so compelling.

Sure the cost of separating Siamese twins joined at the heart is astronomical, but how can you deny those children (or at least one of them) a chance at life? Can you put a value on a human being? Damn the cost, save that child. And maybe it is true universal health care would mean more people would live healthier lives on the whole. But does that really mean you'll have to have a rule that the life of an 80-year-old heart attack patient is valued less than the life of a 14-year-old boy with a kidney problem? Look in the face of the 80-year-old. Who makes the decision that someone's grandmother has to die? When we view facts as nothing more than the building blocks of drama, our focus is so close on the characters whose story those facts affect that it's easy to forget anything outside them.

"Life. What a beautiful choice."
—Anti-abortion TV ad

"Every life is a story waiting to be told."
—Ad campaign for the *Los Angeles Times*

There is no better example of the way the dramatic style now suffuses all of American society than the single example of abortion. The issue of abortion was established fully within the dramatic style sometime in the '70s, and it has flourished ever since as the most dramatic and polarized public-policy debate in modern America. While other issues such as race and sexual orientation have been similarly hyperdramatized, abortion adds a unique dimension that makes it the front runner in the drama derby—it involves the most explicit and interesting example of actual playwriting.

State laws concerning abortion date back to the beginning of this country, but the modern debate about abortion began when women first asserted that the decision whether or not to bear a child was included within the Constitution's right to privacy. The legal and constitutional argument is about government power over the individual and the specific point at which states may control personal decisions. This strictly legal argument has played itself out in a number of factual arenas, from searches and seizures in criminal cases to laws governing specific kinds of speech.

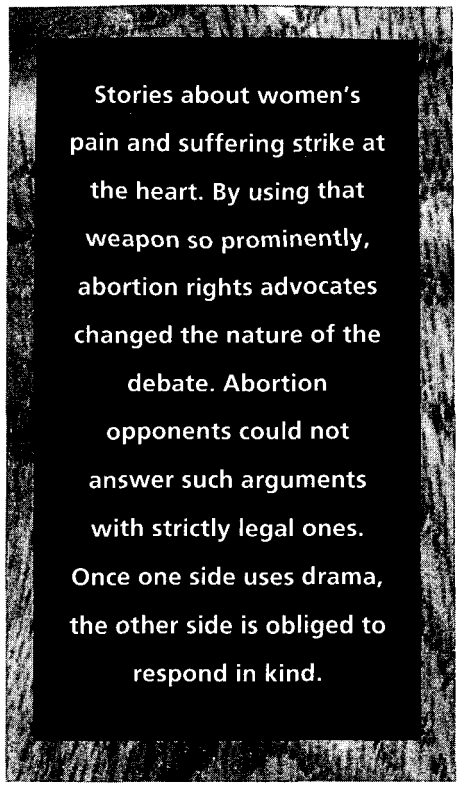
But while the underlying issue was a legal one, advocates challenging state abortion laws framed the debate in more dramatic terms. What was at stake was "women's lives." The image of a coat hanger, symbol of the thousands and thousands of dangerous back-alley abortions, became the centerpiece of the pro-choice argument. Women who had undergone such humiliating and life-threatening procedures came forward to tell their personal stories. Details filled the air.

As in *Callins v. Collins*, those stories were not false. Women had suffered during illegal abortions, and women had senselessly died. And all to assert an important aspect of human autonomy—the ability to make a choice about a highly personal, intimate, and life-changing decision.

By answering the laws in these dramatic terms, women were using a powerful tool to persuade the public and the courts. And at least as far as public opinion goes, perhaps no other kind of argument would have been as effective. The questions of governmental power and individual dignity are complex and often

difficult to comprehend. Stories about women's pain and suffering strike at the heart; pity moves. But by using that singular weapon so prominently, abortion rights advocates also changed the nature of the debate. Abortion opponents could not answer such arguments with strictly legal ones. Once one side uses drama, the other side is obliged to respond in kind.

Therefore, the debate surrounding *Roe v. Wade* became one pitting women's lives against the lives of fetuses. Again, at least as the courts framed the issue, the vocabulary was from the Constitution. But it was the images of pity and terror that stirred everyone up, not the 14th Amendment and citations of *Griswold v. Connecticut*. As we all know, in the battle between women and fetuses, fetuses lost: a KO in the first trimester, and a partial but pretty clear upset in the second.


Stories about women's pain and suffering strike at the heart. By using that weapon so prominently, abortion rights advocates changed the nature of the debate. Abortion opponents could not answer such arguments with strictly legal ones. Once one side uses drama, the other side is obliged to respond in kind.

But *Roe* did not end the debate. And what kept abortion alive as an issue was the unconditionally dramatic terms in which the debate was now cast. Far from accepting *Roe* as a defeat, anti-abortion activists viewed the decision as a challenge. If abortion rights advocates could win the battle on dramatic terms, anti-abortionists would up the emotional ante and try to seize their victory in the war. In the years following *Roe*, fetuses were not just defined as human beings entitled to all the rights and privileges of the law, they were described as human beings, referred to as human beings, and finally depicted as human beings. Commercials, videos, ads showed how much a fetus looks like a baby. They called our attention to little toes and tiny fingers, movement, brainwaves, and the little guy's beating heart.

Roe was not overturned, and so the emotional ammunition went nuclear. Some pro-choice candidates found themselves having to answer ads showing footage of abortions, the bloody parts and remains of actual aborted fetuses. Objects claimed to be the end result of such abortions were bottled and displayed like the fragments of unholy saints, or attractions in the abortion sideshow to the circus of American politics. Clinic blockaders hooked arms and crawled like children, praying with all the conviction only true believers can muster, and crying, crying real tears for all the murdered babies.

To many on the pro-choice side these tactics seemed unfair, but anti-abortion activists were doing no more than pro-choice advocates had done—they were making their appeal dramatically. Whatever legal issues had once provided the foundation for the abortion debate were now nearly invisible. All that was left was drama.

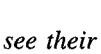
But the anti-abortion argument deploys a wondrous variation on the self-dramatization pro-choice women relied on. Women who had suffered through illegal abortions were always telling the stories they had experienced, the central conceit of the dramatic style. But those who oppose abortion have no story with which to start, no self to dramatize. They are not, after all, telling their own stories but are appealing to our compassion for someone who as yet has no voice. But just defining a fetus as "potential life" isn't enough for the dramatic style to work. There has to be an actual story to dramatize.

A fetus's suffering can be implied from the pieces that remain in the aftermath of an abortion. But that image presents suffering without a story attached. The details are lacking. After a quick, horrific image, there's not much drama to fill an argument's sails the way a good back-alley abortion will.

But there is a way to get around this almost definitional problem—appeal to stories that actually do exist. Extrapolate from "potential life" to the visible lives of real children. Every fetus becomes not just a fetus, but your child. Look in your child's eyes. Look in this fetus's eyes. Could you kill your child? How, then, could you let someone else kill hers?

This is an almost quintessential act of playwriting, and its creative brilliance is breathtaking. People who have no story to tell, but who must exist in the world of dramatic style where a story is the only currency accepted or appropriate, invent a small life story through an appeal to empathy, and then posit that the story is being ended, even though in reality it has never begun. Suddenly, the images of fetus parts disappeared from the debate and were replaced by children on swings, wide-eyed little girls and energetic little boys, and the nicest narrator in the world intoning, "Life. What a beautiful choice."

The point is not so much to demonstrate the emotional manipulation of these advertisements as to show how fully we have accepted the dramatic style as a style. The dramatic style *is* the argument. To the extent the beautiful choice ads are intended to influence public policy, they are emblematic of the necessity in the modern world of conducting public policy debate in drama's terms. If you don't have a story, invent one, or stage one, or buy one from somebody. But you can't be heard until you have a story to tell, until you've proved you can tug at heartstrings.



"So often we simply must see their faces, hear their voices, in order to really be convinced of the truth of what we are being told—and so often we do not because the reporter has failed us as a storyteller. He has not been sensitive to what readers like, *to those high-interest elements that separate a good story—or story idea—from a tedious, unengaging one."*

—William E. Blundell in *The Art and Craft of Feature Writing*

Personal stories are not the only basis on which politics can be conducted. Personal stories are illustrations, but they fit into a bigger picture—an analytical framework, a statistical pattern, a social context, a philosophical point. Isolated from such broader contexts, personal stories can be entertaining but can lead away from reason, not toward it; every story has a counterstory somewhere. Every woman skulking down a back alley has a counterpart, a child somewhere on a swing. Every man about to be executed has a mother, but he also has a victim, who also has a mother. And every single story is only one, one among a multitude that could be told. The black guy who didn't get the job because of unfair prejudice has a story to tell, but so does the white guy across town who's unemployed because of an affirmative action policy, not because he wasn't qualified. Jesse Helms and Jesse Jackson both know how effectively stories work in the public world.

Judgment and empathy are in eternal conflict, but in recent years empathy has gained a considerable edge because of our extravagant exposure to drama. Courtrooms are only one among a hundred places where we let our compassion tip the scales and then wonder why things turned out the way they did.

The problem boils down to a terrible irony—when public debate relies on the empathy engendered by stories, our compassion can be used to paralyze us. The reason we do not use the death penalty more than we do is not "legal technicalities," or too many liberal judges, or laws that are exceedingly lax. The reason we do not execute more people is that we are frozen in place by compassion when it comes down to the wire. The possibility that we might execute the wrong man is the most horrific story imaginable. While acknowledging its statistical improbability, Justice Blackmun said in *Callins v. Collins* that even the rare possibility of being party to such a story was too much for him.

When Justice Blackmun announced his retirement from the Supreme Court, it was his compassion as a judge that was most often mentioned, not only his compassion for women in *Roe v. Wade*, or for criminal defendants who might have been convicted wrongfully, but compassion for minorities of all kinds. But compassion for one party is often hostility to someone else. In public debate, compassion is a fiction maker's trick without a fiction maker's control over context. Compassion for welfare mothers is good, but where is the compassion for taxpayers whose obligations are continually on the rise? In the dramatic style, one person's story will ultimately count for more than someone else's, which must be rejected. What does his compassion for women say about Justice Blackmun's compassion for potential children?

Drama gives us pleasure, but as it moves out of fiction into the real world, it carries greater and greater dangers. By focusing public debate on hurt feelings, we almost guarantee we will hurt someone's feelings—the person whose feelings are not being focused on. Public policy cannot focus everywhere at once. And when it tries, we get contradictory policies—attempts, for instance, to cut taxes, increase entitlements, and balance the federal budget all at once.

I don't know if there's any way back from the dramatic style. It arises from too many factors that are inevitable aspects of both human nature and the technological world—the eternal appeal of stories, the pervasiveness of the greatest storytelling medium in history, our inherent desire to be compassionate and caring, the certainty of human conflict. There is no way our news organizations will give up the greatest audience attraction they have at their disposal, and as increasingly factionalized interest groups continue to benefit from the attention and success of pathos and pity, they, too, will hang tough with what works.

But as we grasp at every available theory to explain baffling phenomena of our times, such as why an increasing number of juries are failing to convict criminal defendants (particularly in high profile cases), it may be worthwhile to consider this one: that the most lavishly compensated defense lawyers have seen the changes in our culture affecting the priorities we all have. Judgment and empathy are in eternal conflict, but in recent years empathy has gained a considerable edge because of our extravagant exposure to drama, our intimate familiarity with other points of view. It takes less and less effort to exploit that reality in a courtroom. And courtrooms are only one among a hundred places where we let our compassion tip the scales and then wonder why things turned out the way they did.

Back in the 1940s, a catalog of classes at the University of Southern California law school listed "Rhetoric" as a mandatory course. Today, you would be hard pressed to find a class in rhetoric at any school. But we live in the most rhetorically complex society in history. The dramatic style is one of the most powerful persuasive devices imaginable, and it has become the most common way we debate public issues. Unfortunately, it produces an inevitable downward spiral—drama can only be answered by more and better drama.

But the dramatic style can be recognized as a style, as a rhetorical device that uses facts for its own purposes, that openly manipulates an ambiguous reality, that exploits compassion. The tools for discerning and analyzing drama as a style are fundamental, not only for lawyers, but for anyone who participates in democracy. Yet we do not teach students this—that what is best about us, our compassion and our empathy, can be and frequently is used against us. Until we learn to cull what meager information we are given these days out of the dramatic context within which it's presented, we will continue to be a nation bewitched, bothered, and bewildered by the storytellers who surround us on all sides. ◆

David Link is a lawyer and playwright in Los Angeles.

Shock Waves

By Carolyn Lochhead

Hope for limited-government hegemony on Capitol Hill.

IT IS HARDLY POSSIBLE TO OVERESTIMATE the magnitude of the political earthquake that shook Washington on November 8. The breathtaking Republican sweep of the House, the Senate, and the governorships of the nation's most populous states left Capitol Hill in shock and disarray, ripping through the comfortable Democratic establishment that has reigned virtually unchecked for most of the postwar era.

To a public long riveted on presidential contests, the raw power of the congressional majority is easily overlooked. Personified in one leader, the presidency seems more potent than the warring, shifting factions that are a legislature.

But the presidency is weak by design. It is Congress that writes the laws and spends the money. The president proposes. Congress acts.

Congress has had plenty of help from presidents, Democrat and Republican alike. But it is the Democratic majority in Congress that is most responsible for the creation and expansion of the modern welfare state and all its accoutrements: the crushing tax burden, the erosion of economic and personal freedom, the smothering bureaucracy, the intrusive and mindless regulation of private activity, and the entitlement dependency that saps our common community.

For the postwar generations, which include nearly everyone alive today, Democratic hegemony has been taken for granted—by the press, the public, and by both parties. The day after the election, many on both sides of the aisle were finding the new reality difficult to fathom. Nobody had experienced it for 40 years.

Not one GOP incumbent fell, even as the most revered of liberal icons toppled. Some were defeated, including House Speaker Tom Foley, Ways and Means Chairman Dan Rostenkowski, and Judiciary Chairman Jack Brooks. Others were pitched from their Hill thrones into minority ignominy. Grand Inquisitors like John Dingell and Henry Waxman can no longer terrorize from their committee chairmanships. Potentates who crafted every modern federal law and shaped every federal program—from welfare, to labor, to the environment, to commerce, to everything—have been stripped of the power they have wielded so freely for decades.

Democrats will lose as well the thousands of professional aides who have made careers of designing federal law and making the mischief that the rest of the country has had to cope with. The Republican sweep will decimate the institutional foundation on which the Democratic agenda rests.

"It's unfathomable," said one House Democratic aide. With Speaker-in-waiting Newt Gingrich promising to cut congressional staff by a third, and with the new GOP majority controlling the bulk of the remainder, some three quarters of the Democratic positions could be wiped out—more if committees are disbanded or consolidated. "It hasn't sunk in yet," the aide said. "People can't even comprehend it. It's everyone," from senior committee counsel to the patronage employees who send the Capitol's elevators up and down. (The Hill has automatic elevators *and* people to press the buttons.)

"It's Joy in Mudville as thousands of staffers are thrown out on the street," huffed one Democratic press secretary, arguing that it would be foolish to fire everyone. "Do you want 'entrenched' airline pilots or do you want somebody brand frigging new?"

Somebody brand frigging new, one hopes, to pilot American democracy out of its headlong drive toward socialism. Democrats will scatter to the hinterlands. The White House cannot accommodate the thousands who must go, and the lobbying firms are bracing for a regime where Democratic contacts trade at a deep discount.

Now the levers of power can be moved by those who might pay more respect to markets and be more suspicious of government's ability to right every wrong and solve every ill.

WHETHER REPUBLICANS HAVE THE courage to roll back government is the $1.5 trillion question. One sympathetic observer estimated that the GOP has 60 days to close ranks behind an agenda.

Struggles are already emerging between energized conservatives and the old Republican guard that still rules the Senate and will hold key chairmanships there—from Majority Leader Bob Dole to Pete Domenici at Budget, Nancy Kassebaum at Labor, John Chafee at Environment, Mark Hatfield at Appropriations, and Bob Packwood at Finance.

The presidential contest introduces its own dynamic, with Texas Sen. Phil Gramm turning the heat on Dole. It is worth noting that from the start of the Clinton health-care debacle, which set up the Democratic slaughter, Gramm adopted a no-compromise, free-market opposition. Running from their principles, most other Republicans were stressing their commitment to health reform. Dole was busy setting up a huge Republican-style alternative health entitlement, buying into the Democratic agenda with less of the same. Ultimately, the party moved to Gramm's position, derailing a near national disaster.

The GOP remains divided, and short of a veto-proof majority. Also, warns California Rep. Chris Cox, "A Republican takeover is not identical to a libertarian takeover."

Still, the election and the platforms it was waged on leave no doubt that the voters have moved right and want government to move with them. The election saw a resurgence of Reaganism arguably more powerful than the first version, an unapologetic conservatism that rejected the redistributionist politics of entitlement.

The campaigns were overtly ideological. Far from issueless or anti-incumbent, they were anti-crime, anti-government, anti-spending, anti-tax, across the nation, even in such liberal strongholds as Maryland and Massachusetts. Democrats ran on the Republican agenda. No one ran on the Clinton agenda.

For the first time in memory, voters rejected pork-barrel politics in favor of candidates who had the courage to say that money for new bridges and youth programs comes not from the sky, but from taxpayers, minus a stiff charge for Washington's recycling. Government is now taking $1.00 out of every $3.00 that people earn, costing families more than food, shelter, and clothing combined. An average family of four pays $16,000 a year in taxes to support a rapidly expanding dependent class, from research scientists on federal grants to crack babies on Medicaid.

"The voters sent us a message, not just a tap on the shoulder," says California Rep. Bill Baker. "They gave a knockout punch to the Speaker of the House, to the former chairman of Ways and Means and to many, many important figures in the liberal government. They've had enough."

PRESIDENT CLINTON WAS EITHER UNCOMprehending or disingenuous at his November 9 press conference. He acknowledged that voters want "a smaller government that reflects their interests and values," but then added, "That is what I've tried to do."

This after spending two years throwing all the weight of his office behind a government takeover of health care. In a huge miscalculation, the Clintons believed they could capture the loyalty of an entire generation by offering the biggest New Deal entitlement since Social Security. Even on Capitol Hill, the conventional wisdom right up to August was that Republicans would pay dearly at the polls for obstructing a big new health-care benefit. It was utter nonsense.

Clinton will find it difficult, however, to disengage from his party's ideology. The New Democrat idea itself is internally inconsistent, fashioned on an oxymoronic paradigm of "free-market government," imbued with such intellectually vacant notions as "managed competition" and "reinventing government."

George Bush wrecked his presidency on the same shoals. Apologizing for Reaganism with a "kinder and gentler" approach, he hoped to win liberal plaudits. He introduced the Clean Air Act amendments to prove he was the environmental president and the Americans with Disabilities Act to show he cared about civil rights. Not only did he get little credit: He was excoriated by liberals for not going far enough. Then he compromised with Democrats on his tax pledge and promptly sank his presidency.

Just as Bush could not outflank liberals on the left, Clinton cannot outflank conservatives on the right. If he tries, he will only succeed in alienating his political base. The GOP, for its part, must muster the courage of its own convictions on everything from Medicare to farm subsidies to defense spending.

Just as Bush could not outflank liberals on the left, Bill Clinton cannot outflank conservatives on the right. If he tries, he will succeed only, as Bush did, in alienating his political base.

The GOP, for its part, must muster the courage of its own convictions on everything from Medicare to farm subsidies to defense spending. And it will have to do so under relentless press attack. Cox notes that the day after a historic GOP victory, *The Wall Street Journal* ran a negative front page story on Gingrich, replete with tales of his divorce. After Hillary Clinton's health-care debacle, the same paper ran a glowing profile of her.

"The press sees this election as an anomaly and a fluke and they've got to have it repaired," Cox says. "To them, it's how can America be so dumb? They will try to destroy this Congress before it starts."

A hostile press helped cripple the Reagan administration. When Gingrich introduces capital gains tax cuts, the press will not cheer as it did when Clinton unveiled his health-care plan. Still, it is a new decade—of cable television, C-SPAN, and talk radio.

Moreover, to a degree we reporters are loath to admit, the party in power controls the legislative process and through it the flow of daily news. Republicans have a chance to reshape the public discourse, using, as Democrats have for 40 years, the hearings, floor debates, government studies, and investigations that feed the Washington press corps.

Conservatives have never had this power. Now we have the astonishing sight of Newt Gingrich and Phil Gramm surrounded by the banks of cameras and nests of microphones and throngs of reporters who once recorded every utterance of George Mitchell and Tom Foley.

"Just the opportunity to actually get something done, instead of trying to influence the policy debate through floor statements or introducing legislation that doesn't go anywhere," marveled one House aide. "To actually be able to bring a bill to the floor! That in itself is such a momentous change, whether or not they pass the thing. To be able to get the debate engaged, really is just amazing." ®

Contributing Editor Carolyn Lochhead is Washington correspondent for the San Francisco Chronicle.

Spoils Sports

By Rick Henderson

The administration's civil-rights agenda: income redistribution

"Fed Finds Disparities in Mortgage Denials," blared a *Washington Post* headline on October 27. The *Post* reported that data from the Federal Financial Institutions Examination Council showed that "blacks and Hispanics were nearly twice as likely as whites with similar incomes to be denied credit in 1993."

But the Home Mortgage Disclosure Act data did not include the credit ratings of the individuals surveyed. It didn't consider the applicants' balance sheets—had they accumulated assets when they applied for loans or were they mired in debt? The report merely compared the percentage of loans approved for people of different racial backgrounds who have similar incomes, not why people who were denied loans didn't get them.

To civil-rights advocates, this information appears irrelevant. Even though the number of loans to blacks last year increased by 36 percent, the loans to Hispanics by 25 percent, and the loans to Asians and American Indians by 7 percent, this hardly qualifies as progress for civil-rights activists. Robert L. Gnaizda, general counsel of the San Francisco-based Greenlining Coalition, told *The New York Times* that some lending institutions "will not go far [in lending to members of racial minorities] until they bear the brunt of more Justice Department suits."

And the administration has proposed new regulations under the Community Reinvestment Act that require banks to offer credit in the communities where they take deposits. The regulations would force banks to record the race and gender of small-business owners who receive loans. Regulators would use this information to make sure that financial institutions are lending money in the proper proportions (that is, by quotas) to targeted groups.

Under the proposed regulations, a business that is a male-female partnership would be considered as male-owned unless the female owns at least 51 percent of the partnership; similarly, a business with equal white-black or white-Latino ownership would be considered white-owned unless the "minority" owner possesses a majority of the business.

It's payback time for civil-rights groups who claim they were stiffed during the Reagan and Bush years. The Clinton administration has filled its anti-discrimination offices with representatives of left-leaning organizations who see race-conscious policies, along with tougher regulations on businesses and individuals, as appropriate ways to redistribute wealth to certain favored groups. Rather than ratchet up tax rates, the Clintonites have discovered that regulations and aggressive law enforcement can also move resources around. In an October 26 *Washington Post* story, Deval Patrick, head of the Justice Department's civil rights division, defended the administration's aggressive stance by saying, "It's nuts to think that we could reverse the effects of 300 years of deprivation by a few court decisions and a few good statutes."

Of course, the Clinton White House hasn't created its anti-discrimination policy out of whole cloth. It had knowing accomplices in the Bush administration who championed the 1991 Civil Rights Act, which for the first time permits jury trials and lets plaintiffs seek punitive damages (for as much as $300,000) in employment-discrimination suits. Bush was also a key supporter of the Americans with Disabilities Act, a law Minneapolis employment attorney David Duddleston calls "the most significant employment bill since the Civil Rights Act of 1866."

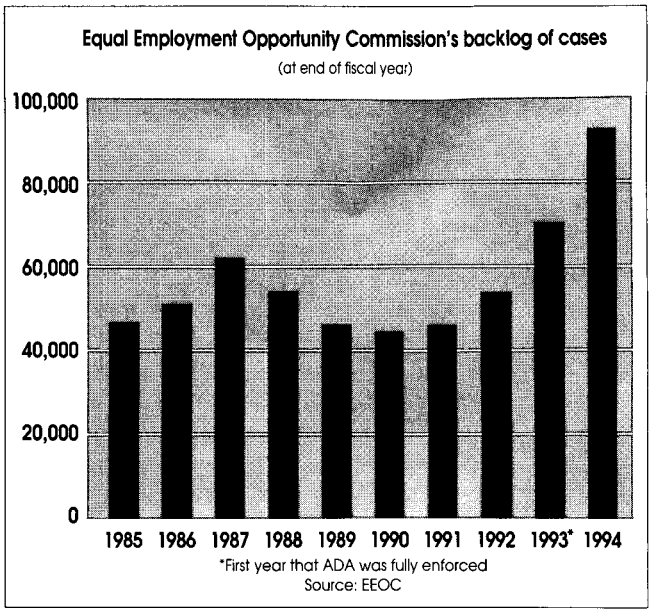
The Equal Employment Opportunity Commission, which pursues private-sector discrimination cases, is flooded with potential lawsuits; the ADA is fueling that surge. At the end of the third quarter of 1994, the EEOC reported 92,396 discrimination charges awaiting investigation, a 31-percent increase over the total at the end of September 1993. The EEOC says implementation of the 1991 Civil Rights Act and the ADA has doubled its inventory of cases pending investigation. The number of pending disability cases has increased by 27 percent, from 10,737 in the third quarter of 1993 to 13,651 at the same time in 1994—the largest increase in number of cases facing the commission.

Even with the Bush legacy, current civil-rights litigation has a decidedly Clintonian spin. Consider:

- The Labor Department is undertaking a high-profile campaign against government contractors that allegedly discriminate. Its criteria for discrimination, however, appear to be creative. For instance, in September the department announced a $6.5-million settlement in a 17-year-old case against Honeywell Inc. *Business Week* reports that the department used as "evidence" of discrimination against women Honeywell's practice of posting some internal promotions on blue paper.
- The Federal Communications Commission implemented minority set-asides for the *auction* of a new category of wireless telephone and data-service licenses. While federal agencies have previously used set-asides only in those instances where past discrimination existed, here the FCC is allocating licenses for entirely new technologies on racial grounds. FCC Chairman Reed Hundt has said these set-asides are "not affirmative action but af-

firmative opportunity."

• On September 6, the Justice Department reversed its position in the case of Sharon Taxman, a white New Jersey high-school business teacher who was laid off so that an equally qualified black teacher could keep her job. School officials in Piscataway had previously decided such layoffs by drawing lots; in this case, officials admit Taxman was fired solely because of her race. The Bush administration represented Taxman, who won her discrimination case in U.S. District Court. On appeal, Clinton's Justice Department has filed a brief for the school board, saying employers can use affirmative-action programs to promote members of racial minorities ahead of equally qualified whites.



• Business are starting to notice the effects of the Family and Medical Leave Act, which George Bush opposed and Clinton proudly signed into law. When combined with the ADA, says attorney Duddleston, the family-leave act "is a phenomenal problem for employers." Employers have traditionally been able to demote or fire workers who were consistently absent from their jobs. Duddleston, a partner in the firm of Mackall, Crounse & Moore, says chronically absent workers now use the FMLA to claim that family illnesses have caused them to develop mental disorders that require time away from the job; these workers then sue if their employers try to penalize them.

PERHAPS THE MOST BREATHTAKING CIVIL-rights enforcement affects financial services. Along with the proposed CRA regulations, the Justice and Treasury departments are pursuing banks and other financial institutions that are allegedly violating fair-lending practices. Justice has already sanctioned banks in Mississippi, New England, South Dakota, Georgia, and Maryland for supposedly discriminating against members of racial minorities. Barnett Bank, Florida's largest, is under investigation.

But there's little evidence that systematic discrimination is taking place. In the Maryland case, Chevy Chase Savings Bank was forced to cough up $140 million to African Americans by, for example, offering below-market-rate loans to minorities and placing ads in black-owned newspapers. Justice showed no evidence that Chevy Chase, the largest thrift in the D.C. area, had denied loans to individuals because of their race. Rather, Chevy Chase hadn't opened new branches in predominantly black neighborhoods. The bank had been operating branches in African-American neighborhoods, but that didn't satisfy civil-rights enforcers: Either those branches had been acquired in a merger or the neighborhoods in which these branches operated had been predominantly white when the branches opened.

Two governors of the Federal Reserve System have criticized the proposed CRA regulations, saying financial institutions will make risky loans to women or racial minorities so that they can avoid discrimination lawsuits. Fed Governor Lawrence Lindsey considers the regulations a blatant power grab by political micromanagers in Congress and the White House. He has recently encouraged public comments, presumably critical, of the regulations. And Governor John LaWare told the Dow Jones News Service, "I feel very uneasy about the de facto allocation of credit and banking resources by administrative fiat."

IT ISN'T NECESSARY FOR THE Clinton team to sue employers en masse to guarantee that money and jobs flow to members of favored groups: A few high-profile cases will do. Companies shy away from the glare of publicity in discrimination cases, even if they are blameless. And when a firm faces a discrimination charge, says Stephen A. Bokat, general counsel for the U.S. Chamber of Commerce, managers "are faced with a Hobson's Choice: spend a fortune to defend yourself, having a jury which isn't sympathetic to business decide the case, or settle."

Though the 104th Congress will presumably look askance at even tougher business regulations, the administration's civil-rights team can still cause plenty of mischief for business operators. Karen Kerrigan, president of the Small Business Survival Committee, says civil-rights advocates and union leaders can use their contacts with sympathetic government officials to push tougher regulations without the help of Congress. Reich, for instance, has cultivated contacts with feminist groups who want to implement comparable worth.

In the long run, however, Kerrigan predicts these backroom deals between activists and regulators will backfire. She notes a growing sentiment among business operators that "government has overstepped its boundaries. Employers and average citizens have recognized this and have called a halt to new legislation." Stopping new laws may well slow down hyperactive regulators. A more daunting task will be rolling back the regulatory apparatus that's already in place. ®

Rick Henderson is Washington editor of REASON.

Deficit Delusions

By Robert G. Robinson Jr.

Clinton can't take credit for temporary good budget news.

PRESIDENT CLINTON'S crowing over the apparent progress made in reducing the federal deficit since he took office is reaching near thunderous proportions.

"The decline in the deficit since 1992 is the largest two-year decline in our history, and the first time in 20 years the deficit has gone down for two years in a row," Clinton said in a speech October 24 in Cleveland, where he announced that the deficit was now $203 billion. "If we hadn't passed the deficit reduction plan last year, the deficit would have been off the charts, up here at $305 billion."

A problem with Clinton's conclusion: It isn't true. A wide range of evidence suggests that the deficit's temporary decline —it is scheduled to resume climbing next year—had little to do with the administration's 1993 budget package. That package of $433 billion in deficit reduction over a five-year period wasn't even passed until August 1993, less than two months before the end of fiscal 1993. Thus, it could only have had minimal effect on that year.

Also, most of the spending cuts that made up about half of the so-called deficit reduction were aimed at the "out" years of the five-year period. For the most part, they haven't happened yet. And some decline in the deficit had already been predicted by the Congressional Budget Office in January 1993, a month before Clinton took office.

The truth is that most of the so-called deficit reduction over the past two fiscal years would have happened no matter who was in the White House. Fortunately for Bill Clinton, he was in the right place at the right time.

In January 1993, the CBO projected that the deficit would hit $310 billion at the end of that fiscal year (on September 30) and then drop to $291 billion for 1994. Instead, the deficit dropped to $255 billion in 1993 and $203 billion in 1994. What accounts for the $144 billion decline over the two years?

"The deficit reduction has been generated by a reversal of the earlier cash-flow outlays for the savings and loan bailouts, legislated tax hikes and stronger economic growth," writes economist Mickey Levy of NationsBanc Capital Markets Inc. In a September paper for the Shadow Open Market Committee, a group of monetarist-oriented Federal Reserve watchers, Levy notes that progress in reducing the deficit has been largely "illusory" because the basic structural problems with the budget remain intact.

According to an analysis by Sen. Pete Domenici (N.M.), ranking Republican member of the Senate Budget Committee, the administration can probably claim credit for about 12 percent of the deficit reduction that occurred in fiscal years 1993 and 1994.

"Of the $144 billion reduction in the cumulative deficit over the last two years, nearly three quarters (73 percent) or $107 billion results from 'technical re-estimates.' These technical factors are completely unrelated to any specific policy proposed, legislation enacted by the 103rd Congress, or any action taken by the president," he contends.

The biggest technical re-estimate was the downward revision of the cost of the savings & loan bailout—some $45 billion worth. That came about because analysts overestimated the number of thrifts that would be taken over in 1993, partly because improved economic conditions kept more of them from falling into receivership. In addition, outlays for the thrift bailout peaked at $66.1 billion in 1991 and then abruptly changed direction when the Resolution Trust Corporation, the government agency charged with cleaning up the mess, sold S&L assets.

Medical costs have also dropped faster than expected, which led to a $22-billion technical re-estimate in projected Medicare and Medicaid costs. Some of that drop may be attributed to presidential jawboning, but more of it came from natural forces at work in the marketplace as health maintenance organizations began lowering costs. Analysts had also overestimated interest costs.

REVENUE FROM NEW ESTIMATES UNRElated to any tax law changes or economic changes, such as higher-than-expected corporate profits, increased $24 billion, according to Domenici. Another $22 billion is explained by stronger economic conditions.

HENRY PAYNE

The sole administration action that contributed to the reduction of the deficit was raising $28 billion in new taxes and user fees in 1994—but spending on the Los Angeles earthquake and the Midwest floods ate up an unplanned $11 billion. That spending was added to the deficit under current budget rules, giving the administration a net of $17 billion in deficit reduction because of policy changes, under Domenici's analysis.

In short, the drop in the deficit was largely because of the surging economic recovery, which saw two strong quarters of growth just before Bill Clinton took office, and from overestimates of the cost of cleaning up the S&L debacle.

The Office of Management and Budget, headed by Alice Rivlin, now sees the deficit bottoming out at $168 billion in 1995 and then rising to $184 billion in 1996 and $194 billion in 1997, according to the now-famous memo by Rivlin. By the turn of the century, it will reach $235 billion. (The CBO estimate at this point is even higher—$257 billion.)

From there, OMB estimates that the deficit will climb to $285 billion in the year 2004. (The CBO says $397 billion). OMB then projects a deficit of $456 billion in the year 2010, $1.5 trillion in 2020, and $4.1 trillion in 2030.

As a share of gross domestic product, OMB projects that the deficit will remain in the 2.5 percent range through the year 2004 but then begin to climb out of sight, reaching 2.9 percent by 2010 and 5.9 percent by 2020. It then will double to 10.4 percent of GDP in 2030.

THOSE PROJECTIONS ARE WHY THE ADMINistration is closely watching the Bipartisan Commission on Entitlements. Its report, due out December 15, is expected to call for a number of tough measures to stem the rising tide of entitlement spending. (See "Retirement Wrangle," November 1994.)

The pre-election hullabaloo inside the Beltway over the leaked secret memo by Rivlin merely reinforces the problems surrounding Clinton's claim that his administration was responsible for the two years of lower deficits. Although the White House spin was that the 11-page memo was a mere "catalog" of proposals that have been floated by Republicans and various think tanks, any reasonably intelligent observer would understand it was a set of talking points for the immediate future. "Decisions must be made soon about the policies to be articulated in the FY 1996 budget, the State of the Union, and our response to the Kerry-Danforth Commission report," Rivlin wrote in the October 3 memorandum.

Levy, in his paper for the Shadow Open Market Committee, complained that policy makers have "left untouched" the structural flaws that "are the sources of the fastest growing spending programs." He found that from 1990 to 1994, spending on entitlements and other mandatory programs rose at an 8.8 percent annual rate—even faster than in the 1980s, in part because of an increase in welfare recipients during the recession and the slow-starting recovery.

Tax revenue growth accelerated dramatically in 1994, increasing nearly 10 percent, he added, reflecting both the 1993 budget deal hikes as well as stronger economic growth. He also hints that taxpayers could be forced to pick up the cost of the administration's decision last year to alter the Treasury Department's debt management strategy and shorten the duration of government debt. In effect, the administration purchased more short-term securities because interest rates had dropped. With interest rates now rising, that could "prove costly to taxpayers," Levy wrote.

"The administration has raised its projections of net interest outlays, and uncertainty about future costs have [sic] heightened, particularly as the Federal Reserve pursues a disinflationary monetary policy," wrote Levy. If Clinton is around to preside over the possible deficit ballooning to come, his crowing may have to give way to eating crow.

Robert G. Robinson Jr. reports on politics, budget, and trade matters for Market News Service.

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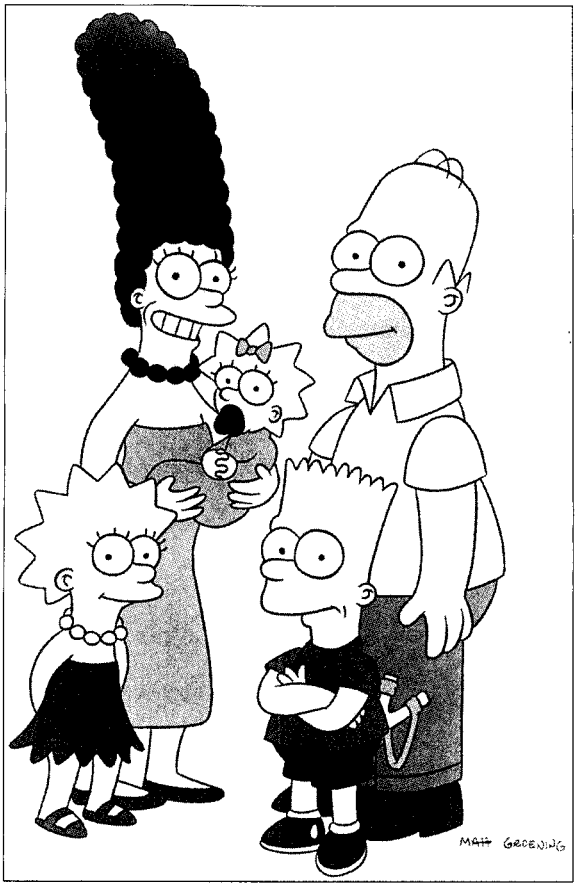
Teleprompting

By Nick Gillespie

What TV can teach us about TV.



The Simpsons: Postmodern entertainment for today's sophisticated TV audience

OVER THE PAST FEW YEARS, television shows, especially sitcoms, have become increasingly self-referential, increasingly willing to poke fun at and highlight their own generic conventions, pretensions, and limitations. While some programs, such as *NYPD Blue*, strive to transcend the medium by being "serious," "gritty," and "true-to-life," more and more shows seem willing to consciously play with TV's history and forms, borrow widely from a variety of high-brow and low-brow sources, and create new clichés while referring to old ones.

This is a roundabout way of saying that TV is becoming—or perhaps has already become—*postmodern*. And, despite the many negative connotations of that troublesome term, that's not such a bad thing. Consider a few distinctive features of today's vast wasteland:

• Comedy Central's most original and most popular first-run show is the delightful *Mystery Science Theater 3000*, now in its sixth season. *MST3K* is a rather odd spectatorial experience: It revolves around watching other people—actually, two robots and a human being—watching such indescribably bad movies as *Godzilla vs. the Smog Monster* and *Robot Monster*. The characters shout widely allusive wisecracks at the screen; somehow, that act of critical viewing makes horrible films incredible fun to watch.

• Virtually every episode of Fox's *The Simpsons* comments on the act of watching television itself or on shop-worn conceits endlessly recycled by movies and TV shows. For example, in the most recent Halloween special, which parodies *The Shining* (pronounced "shin-ing," one character notes, to avoid copyright infringement hassles) Homer goes berserk after being denied the symbiotic pleasures of watching TV and drinking beer. Mere seconds away from killing his family, Homer picks up a small, hand-held TV set in the snow. "Urge to kill fading," intones a soothed Homer. "Come, family, sit in the snow with Daddy and let us all bask in television's warm glowing warming glow," says Homer. The last shot is the family, literally frozen in front of the TV, unable to move or even close their eyes, screaming in horror as the TV announces the next program: "Live from Broadway, it's the Tony Awards, with your hosts Tyne Daly and Hal Linden!"

In another episode, Bart and Lisa tour the studios where their favorite cartoon, *Itchy & Scratchy*, is made. As the show's producer is explaining to them that the animators save time and money by reusing the same background footage over and over again, we see them walking by the same woman mopping the floor over and over again. And although Montgomery Burns, the evil owner of Springfield's nuclear power plant (and Homer's employer), meets the Simpson family in virtually every other episode (indeed, he even legally adopts Bart in one), he must constantly be reintroduced to them.

• ABC's *Roseanne*, a top-rated sitcom often hailed (or decried, depending on the critic) as "realistic," is filled with absurd moments that play with the forms of the TV medium. Last season, for instance, the episode that introduced a new actress in the role of Becky Connor ended with the family watching a rerun of the 1960s sitcom *Bewitched*. One by one, the characters note how much more they prefer Dick York in the role of Darren to his replacement, Dick Sargent. When it's Becky's turn, however, she looks at the camera and professes a fondness for the successor.

• In what is surely one of the most inspired comic moments in television history, the final episode of *Newhart*, which ran during the late '80s and early '90s, unveils the entire series as a nightmare dreamed by Dr. Bob Hartley, the main character of Bob Newhart's previous sitcom (aptly titled *The Bob Newhart Show*), which ran from 1972 to 1978. *Newhart* apparently ends with Newhart's character, Dick, being struck in the head by a golf ball and falling unconscious—possibly

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dead—to the floor. Then the scene switches to the darkened bedroom of Bob and Emily Hartley, with Bob waking up, turning on the light, and waking his wife —the traditional final scene of each episode in the original *Bob Newhart Show*.

Similar antics can be found on any number of other current TV shows ranging from *Beavis and Butt-head* to *Northern Exposure*, *The Larry Sanders Show* to *Late Night with David Letterman*, *Seinfeld* to *Sisters*; defunct shows such as *Second City TV*, *Moonlighting*, *Police Squad*, *Get a Life!*, and *The Jackie Thomas Show* provide examples of the trend as well. Self-consciousness and parody, of course, are hardly new to TV. *I Love Lucy*, for example, paraded guest stars lampooning themselves (including George Reeves/Superman) and *The Dick Van Dyke Show* featured *The Alan Brady Show*, a show-within-a-show.

Today's postmodern shows, however, are different, not only because they are the rule and not the exception. More so than in the past, they relentlessly disrupt audience expectations by breaking with established forms and assuming that viewers are conversant with a broad range of cultural references. Because TV is at the very center of our common culture, this shift is of no small significance.

INTERESTINGLY, A REJECTION OF POST-modernist aesthetics is a unifying theme for rightists and leftists, who often smear each other as witting or unwitting boosters of postmodernism. Conservative culture critics tend to see postmodernism as an exercise in nihilism, the inevitable consequence of moral and cultural relativism in whose name all truths are rechristened as equally *untrue* fictions. The result is a kind of decadent, ironic ennui. For instance, *The American Spectator*'s movie critic, James Bowman, has decried "the armies of postmodernism...[that]... have conquered and occupied dear old Hollywood": "Perhaps...they are so jaded and tired of the conventions of their art that they send them up, just to relieve the boredom of too many fictions."

The left's response is more complicated but even more damning. It equates postmodernism's aggressive recycling of old forms and subjects with what it sees as consumer capitalism's inexhaustible appetite for new and expanded markets. Just as capitalism is able to commodify any thought or behavior—including resistance to capitalism—goes this line of thinking, so too does TV (in the service of selling things) incorporate all non–TV-based culture into itself. This thesis is neatly expressed in the title of Duke University Professor Frederic Jameson's 1991 book, *Postmodernism, or, The Cultural Logic of Late Capitalism.*

For Jameson, postmodern culture is an "infernal machine" that chews up everything it encounters, spits it out, and chews it up again. Because postmodernism indiscriminately borrows from different periods and genres, it dehistoricizes and trivializes whatever it touches, making it increasingly difficult to distinguish fact from fiction, to know whether what we are seeing is important or trivial. We respond, says Jameson, with "a strange compensatory decorative exhilaration" that is very much like schizophrenia.

For the left, television, with its endless succession of de- and recontextualized images, of sales pitches seguing into programs, is the ultimate wily triumph of the capitalistic juggernaut. It amuses people while bombarding them with propaganda for consumer culture. If everything can be turned into a (profitable) self-effacing joke, after all, it is virtually impossible to mount meaningful political, economic, and cultural resistance.

BUT THERE'S ANOTHER EXPLANATION FOR the postmodern boom in TV shows, one that avoids apocalyptic rhetoric and actually makes sense of the multi-layered, thoughtful enjoyment viewers experience. What we are witnessing is an artistic medium coming into its own. Of course, because TV has always been characterized as a crass, vulgar medium, it is understandably difficult to think of it as a possessing an aesthetic dimension. (In 1947, before broadcast television had even really taken off, H. L. Mencken opined, "I can only imagine very stupid people looking at it.") But in fact, TV is beginning to draw intricate connections between its present and its past. It is also drawing connections between itself and other art forms.

That same process characterizes all of the arts, especially in the developing stages. Literature, for instance, is filled with great works that refer to and comment on other writings. Cervantes's *Don Quixote de la Mancha* is in part a parody of the conceits and morals of chivalric romances that were still popular in the 16th century. Flaubert's masterpiece, *Madame Bovary*, is a novel essentially about the baleful effects of reading novels. Walker Percy's 1960 novel, *The Moviegoer*, draws on film as a source, something more-contemporary writers continue to do.

This isn't to claim equal artistic status for *Don Quixote* and *Coach*, or *Madame Bovary* and *Blossom*. But the similarities are worth noting. It's also worthwhile to divine the latent pedagogical functions of postmodernist TV. Because its meaning relies on understanding allusions and references to other media, viewers must be capable of making any number of associations—in a sense, they must be well-educated to fully enjoy themselves.

More consequential perhaps is the way that the postmodern elements, by underscoring and commenting on the various rhetorical gestures and stylistic devices employed by TV and other media, help create a critical viewership. Since television is both the site and creator of our contemporary common culture, it is particularly important that we learn how to "read" TV analytically, to evaluate its assorted ways of presenting—and distorting —information. It is impossible to watch *The Simpsons* and not gain a keener appreciation for and resistance to methods of mass marketing and manipulation. In a world full of competing options and possibilities, that is knowledge worth possessing.

Nick Gillespie is assistant editor of REASON.

Leading Hearts

By Steven Hayward

The American Presidency: An Intellectual History, by Forrest McDonald, Lawrence: University Press of Kansas, 516 pages $29.95

Certain Trumpets: The Call of Leaders, by Garry Wills, New York: Simon & Schuster, 336 pages, $23.00

THE TROUBLED PUBLIC MIND IS INcreasingly fixed on the idea of "leadership." The decline of religious and other mediating institutions has consequently magnified the political dimension of leadership well beyond its reasonable limits, especially for the person and office of the American president. The apotheosis—and nadir—of this phenomenon was reached in the campaign of 1992, in the form of the Ross Perot movement, and especially in the three-way debate in Richmond that resembled a *Donahue* show. This was the episode where President George Bush was stymied by a young questioner who wondered whether Bush could empathize with his "needs."

Having replaced a patrician president with one who says he "feels our pain," we are now watching this self-styled empathic chief executive get hoist by his own petard. But Bill Clinton is merely an egregious example of the now-typical practice in American politics of inflating the people's expectations about the capabilities of political leadership. This trend has been unfolding for many years, and could yet prove to be the undoing of the presidency regardless of the occupant. Such is one of the sober conclusions suggested by Forrest McDonald's magisterial intellectual history of the presidency.

McDonald's book should be regarded as the third in a trilogy of indispensable books about executive power, the other two being Harvey Mansfield's *Taming the Prince* (1990) and Jeffrey Tulis's overlooked 1987 masterpiece, *The Rhetorical Presidency*. Where Mansfield argued that executive power paradoxically secures free government by adopting some characteristics of tyranny, Tulis traced the way changes in presidential rhetorical practice over the decades have corrupted our constitutional order.

For his part, McDonald, long regarded as at least a libertarian fellow traveler, thinks that "the presidency has been responsible for less harm and more good, in the nation and in the world, than perhaps any other secular institution in the world." But McDonald's researches leave him "not sanguine" about the future of the presidency and our republic, and he "does not see how anyone who lived through the 1992 presidential election could be."

McDonald, professor of history at the University of Alabama, is the ideal person to shed light on the irony that prompted him to write this book in the first place: the ideological split over "whether the enormous growth of the responsibilities vested in the American presidency has been necessary, practical, or desirable." In recent decades, ideological perspectives on this question have reversed. During the New Deal and after, big government liberals strongly favored the aggrandizement of executive power, while conservatives deplored it and favored congressional and judicial power. Then, with Johnson and Nixon, liberals discovered the "imperial presidency," while even more recently conservatives have come to champion executive power against the excesses of the "imperial Congress." (Terry Eastland's 1992 *Energy in the Executive* is the pre-eminent example of this.)

McDonald is a historian, not a political scientist, so he eschews writing a brief for either side. But his intellectual history of the presidency sheds light on many aspects of government power that both sides argue incessantly about, from the struggle to direct foreign policy to the battle to control the budget and the bureaucracy. For example, McDonald explains how interbranch conflicts over foreign policy and the withholding of information from Congress under the doctrine of "executive privilege" began with the presidency of George Washington.

ALTHOUGH MCDONALD AVOIDS EXPLICitly taking sides in the executive-versus-legislative branch contest, he nonetheless displays a subtle partisanship on the larger question of the proper size and scope of government. Government today, he recognizes and deplores, has become "a huge, amorphous blob, like a creature out of science fiction." The White House has itself become bureaucratized along with the rest of government, to the point that neither the president nor the Congress truly "govern" as that idea was understood by the Framers.

McDonald does not take up the various suggestions for institutional reform of the presidency, such as cabinet government under a quasi-parliamentary system (which was popular with some reformers, such as Lloyd Cutler, in the 1980s). As

Forrest McDonald (left) and **Garry Wills** (right): Scholars speaking truth about power

UNIVERSITY PRESS OF KANSAS
STEVE LEONARD

McDonald sees it, the central problem with the presidency—and government as a whole—is that popular expectations of government have come to exceed its capacity to meet those expectations. Leadership in the cause of expanding government was easy back when statist objectives were arguably within the capacity of government to deliver. Today, Congress increasingly enacts, and the executive tendentiously administers, unenforceable or profligate laws. Attempts at reform usually make matters worse; McDonald has an excellent discussion of the 1974 Budget Act and how it has made fiscal policy even more irresponsible and uncontrollable. Unfortunately, there is only a brief account of Nixon's attempt to gain mastery of the bureaucracy in 1973, which was quickly aborted by Watergate but which may have been the last serious chance for a president to assert control of our administrative state.

McDonald limits himself to history and does not take on the awesome question of what *kind* of leadership is necessary to reduce people's expectations and shrink the state. Garry Wills is obviously not the person to answer this great question, but he usually has some interesting things to say, even when he is flat wrong or up to mischief (which is most of the time). In *Certain Trumpets: The Call of Leaders*, Wills attempts to get at the thing in itself by examining leaders and "antitypes" across a wide spectrum of vocations and callings. Wills glosses over and dismisses the two most popular notions of leadership—the Periclean "great man" school and the Dale Carnegie "winning personality" school—in favor of a more serviceable three-part understanding. Leaders, says Wills, cannot lead without *followers* and a *goal* to aim for. Goals with some kind of *moral dimension*, he adds, provide the clearest and most compelling possibilities for leadership.

This understanding might seem simple or simple-minded, yet it is fitting for a time when many invocations of the need for "leadership" come off as clichéd precisely because the idea of leadership has been cut loose from clear ends to serve. Leadership has been made into a disembodied virtue not dissimilar to the vacuous meanings of the words *caring*, *concern*, or *commitment* as they are used in contemporary discourse. A concrete example that Wills himself would not trumpet is the reason why the president has been known for 50 years as the "leader of the free world." The free world followed the United States because we had fairly clear goals and a reasonably consistent policy. But under the direction of Bill Clinton, Warren Christopher, and Strobe Talbott, "American leadership" is fast becoming an oxymoron.

As McDonald sees it, the central problem with the presidency—and government as a whole—is that popular expectations of government have come to exceed its capacity to meet those expectations.

SOME OF THE PREDICTABLE PEOPLE (FOR Wills) show up in his pantheon: Lincoln, FDR, George Washington, Napoleon, Pope John XXIII, Martin Luther King Jr. But among Wills's "certain trumpets" are a fair number of fluegelhorns, thin reeds, and kazoos. For instance, Andrew Young as a diplomatic leader? As with most of Wills's efforts, there are some acute judgments and observations scattered widely through the pages of the book. *Certain Trumpets* is best in its criticisms of the leadership qualities (or lack thereof) of several "antitypes," especially Clark Kerr, General George MacClellan ("MacClellan, in effect, spent his whole war dressing up for a battle he never attended."), GM's Roger Smith, and even Madonna. His analysis of Adlai Stevenson's defects might well apply to Jack Kemp: "Stevenson felt that the way to

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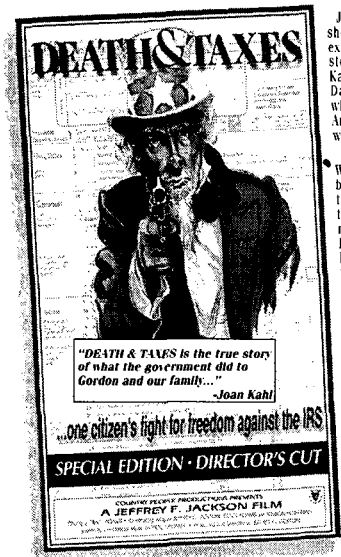
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implement his noble ideas was to present them as a thoughtful idealist and wait for the world to flock to him."

But some of Wills's comparisons misfire and reveal his fondness for statism. Nancy Reagan and her "Just Say No" crusade are held up to ridicule next to Eleanor Roosevelt and *her* brand of do-goodism. Regardless of how one regards the war on drugs, at least Nancy Reagan's slogan appealed to a virtue—self-restraint—that is much in need at the moment, while Eleanor Roosevelt, were she on the scene today, would strike most people as a sanctimonious busybody. A more just comparison, because the circumstances and time frame are more equal, might be Nancy Reagan and Hillary Clinton; in such a contest, it is not clear that Nancy Reagan's style of leadership would come out on the short end. And here and there, Wills verges on a blooper: His comparison of King David to Fidel Castro seems a bit infelicitous, even before the latest round of the "refugee regatta" commenced.

Still, Wills does provide a helpful clue about our times, although he would not acknowledge it as such. He asserts that what we have today is not a shortage of leaders or would-be leaders, but rather a shortage of followers. "We do not lack leaders," he writes. "Various trumpets are always being sounded. Take your pick. We lack sufficient followers." If true, this is good news, because it suggests that individualism may be ascendant. People who are less eager to jump in line behind some "leader" just might be inclined to take responsibility for thinking and doing for themselves.

Perhaps this is the reason for the ambivalence about public attitudes toward contemporary presidents that McDonald notes. We say we want strong, activist presidents, but we also *distrust* strong, activist presidents. If Wills is right that followers are a thinning herd, the "leadership void" we hear bemoaned might well be regarded as society's equivalent of "gridlock" on Capitol Hill. Gridlock, after all, as REASON readers and other anti-statists know, is a *good* thing because it prevents the government from piling stupidity on top of idiocy. All in all, stuffing a mute in the leadership trumpet may not be such a bad idea. Bill Clinton should try it with his saxophone, and learn by analogy.

Contributing Editor Steven Hayward is research and editorial director for the Pacific Research Institute, a San Francisco–based think tank.

The Delegation Dilemma

By Michael S. Greve

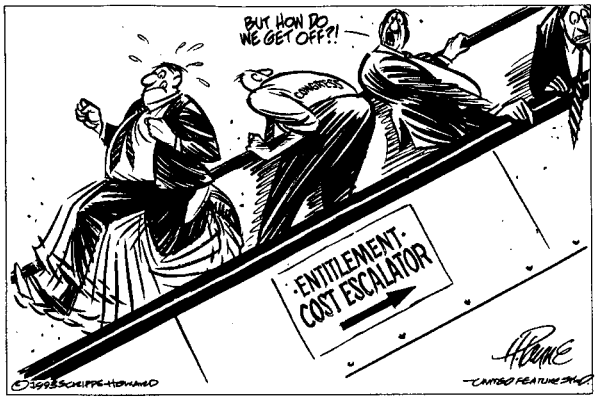
Power Without Responsibility: How Congress Abuses the People Through Delegation, by David Schoenbrod, New Haven: Yale University Press, 255 pages, $28.50

CITIZENS' DISGUST WITH WASHINGTON, D.C., is not only reaching new heights; it is also aiming at new targets. Demands for structural, institutional reforms such as term limits and the Balanced Budget Amendment, rather than tax relief or other specific policy demands, now dominate the popular anti-government agenda. George Will's and John Fund's paeans to term limits, as opposed to more policy-oriented works, are now conservative-libertarian must-reads.

The clamor for radical institutional reform should come as no surprise; nothing else seems to make a difference. The liberal agenda is thoroughly discredited. Nobody believes that our sprawling, meddlesome government is a rousing success. Still, the political aristocracy in Washington, D.C., clings to its ways and even at-

tempts to expand, as in the past year's thwarted attempt to commit the nation's entire health industry to Washington's tender loving care. Sensibly enough, voters have concluded that there is something wrong not just with this or that policy, but with the system.

David Schoenbrod's splendid little book fits squarely into this agenda for structural reform. It is an impassioned argument against one of the ways in which Washington wields power—the congressional delegation of lawmaking authority to administrative agencies, courts, and special interest groups.



Such delegation was once understood to be hazardous to republican government. Delegation breaks the chain of accountability that links the voters to their elected representatives; legislators cannot be held truly responsible for rules that were made by someone else. That is why John Locke argued that "the legislative cannot transfer the power of making law to any other hands," and why the Founders vested *all* federal legislative power in the Congress.

Nowadays, in contrast, delegation is considered a practical necessity, not an unmitigated evil. Any administrative state will require *some* delegation, it is widely assumed. Congress cannot be bothered with every detail or lay down rules for every contingency. Many questions of governance require technical expertise, which administrative agencies—but not generalist legislators—possess. And since the distinction—on which the opponents of delegation must rely—between *making* rules and *interpreting* them is fluid, if not entirely metaphysical, bureaucrats might as well run our lives as long as Congress indicates the general direction.

Schoenbrod shows that this purportedly pragmatic argument is in fact ideological hogwash. Congress doesn't delegate because it lacks the time or knowledge to deal with questions of detail; it delegates in order to exercise, as it were, power without responsibility.

Delegation makes interest-group bargains easier. For example, Congress has conferred upon the secretary of agriculture the authority to issue so-called agricultural marketing orders, which restrict supply, drive up prices, and thus create economic rents for producer cartels. It would be harder for the cartels' legislative patrons to ram the same deal through Congress. Moreover, once the power to fix prices has been delegated, it will remain largely unchecked, because the benefits of the arrangement fall upon a handful of beneficiaries (who will invest significant resources in maintaining it), while its costs are widely dispersed. Besides, the monitoring costs are prohibitive not only for voters but also for legislators, with the exception of the committees and subcommittees dominated by agricultural interests.

THE NEW DEAL, OF COURSE, OPERATED precisely on this principle of entrusting bureaucracies with sweeping authority to regulate "in the public interest"—meaning, usually, to provide concentrated interests with an institutional mechanism for rent collection. In the modern era of

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social and especially environmental regulation, delegation has taken a different form. Congress typically prescribes absolutist environmental goals—"fishable and swimmable water" everywhere in the United States, air quality that protects public health "with an adequate margin of safety"—and instructs the Environmental Protection Agency to attain them promptly, by a certain date, and without regard to cost or technological feasibility.

If and when the agency takes these commands seriously, it will inflict severe pain on producers, workers, and consumers. Congressmen will then rush to denounce the agency; in exchange for a modest campaign contribution, they may also agree to rescue constituents from the "arrogant, runaway" bureaucracy. (They may go further: when President Reagan's first EPA administrator, Ann Gorsuch, called Congress's bluff and threatened to enforce the Clean Air Act, irate lawmakers engineered her removal.)

On the other hand, when the EPA backs off, it will miss the statutory targets, and lawmakers will rail against a "lawless" agency that has made "sweetheart deals" with polluters and ignored the "plain will of Congress." Either way, legislators get all the credit for their environmental commitment—and none of the blame for the attendant costs and dislocations.

Delegation, then, tends to produce the government we love to hate: a sprawling, meddlesome bureaucracy; shady and virtually unassailable arrangements between organized interests, captured agencies, and congressional subcommittees; policy fiascoes for which nobody can be held responsible; and endless dithering and horsetrading. Bureaucrats can't resolve conflicts that Congress, in its desire to please everybody and offend no one, has papered over. The result is less liberty, less democratic accountability, and more —and more unreasonable—regulation.

As Schoenbrod concedes, we would have this sort of government with or without delegation. For example, Congress does not normally delegate its authority to tax; still, few would argue that the tax code is less of a special-interest circus than any regulatory program. For another example, it is hard to imagine a more unambiguous legislative enactment than Title VII of the Civil Rights Act, which prohibits employment discrimination on the basis of race, sex, and other suspect classifications. Yet somehow, bureaucrats and judges managed to twist it into a quota and diversity racket.

Delegation tends to produce the government we love to hate: a sprawling, meddlesome bureaucracy; policy fiascoes for which nobody can be held responsible; and endless dithering and horsetrading.

THE ARGUMENT AGAINST DELEGATION derives its plausibility in part from the contrast between hordes of unaccountable bureaucrats and 535 elected representatives. But Congress itself is a huge, fragmented apparatus, and curbing delegation may simply shift the power to make rules from one swarm of faceless drones at the EPA to another swarm in the Rayburn Office Building.

Finally, it is painfully obvious that delegation is only one among countless devices through which Congress abuses the people. Entitlement programs are on autopilot. Expenditure increases are declared to be budget cuts because they are calculated from artificially inflated baselines. "Legislation" passes in the form of appropriation riders and legislative vetoes, without up-or-down votes or bicameral consent. And so on. "Power without responsibility" is not the hallmark of delegation alone; it is our legislature's general operating principle.

For all that, the very fact that Congress resorts to delegation so frequently and extensively shows that it is a highly effective way of institutionalizing irresponsibility, and that lawmakers find the alternatives more costly. Curbing delegation would therefore be worthwhile, even if Congress could find partial substitutes.

The critical question is how to do this. There is no easy answer. The institutional incentives—the desire to do favors and to escape blame—that make delegation so popular also ensure that the players won't change the system. Only sustained public outrage might make them do so, but delegation is far too arcane a subject for radio talk shows or call-in campaigns.

Schoenbrod knows this and explains, in a critical chapter, "Why the Courts Should Stop Delegation (and Nobody Else Can)." He argues persuasively that the logic and language of the Constitution impose limits upon delegation; that the Supreme Court has ignored these limits and, in fact, denied their existence for decades; and that the commonly cited reason for this abstention—the lack of judicially manageable standards of permissible delegation—is a cop-out.

However, the Supreme Court is rarely guided by intellectual integrity and constitutional logic, and it is highly unlikely that the Justices would develop a robust non-delegation doctrine on their own.

As Schoenbrod himself ably demonstrates, the argument against delegation rests ultimately on a substantive presumption in favor of private orderings and against government intervention. The entire point of prohibiting delegation is to force a resolution of conflicts and to focus responsibility—in economic language, to drive up legislative transaction costs. So long as legislation requires a near-consensus, laws will be genuinely public-regarding or, at least, reflect a broadly acceptable compromise. But a reduction of transaction costs, through delegation or other means, increases both the total volume of legislation and the ratio of special-interest scams.

The Founders, of course, thought that this would be bad, which is why we have

bicameralism, the presidential veto, and separate constituencies and different terms for the president, the House, and the Senate. The trouble is, the Supreme Court has a very different perspective. Modern constitutional law is based on the premise that the Court must not interfere with interest groups politics except to protect racial and other minorities or "preferred freedoms," such as speech and sex. Contracts, property, and other such rights that are the target of ordinary legislation are largely ignored, as are the structural constitutional constraints that used to protect liberty.

The Court's permissiveness toward delegation is of one piece with this perspective. Both are intellectually bankrupt, but the Court cannot shift gears without precipitating a major brawl with Congress. The Court doesn't do that very often. The most recent example in fact is the Court's resistance to the New Deal. Not surprisingly, the two cases in which the Supreme Court last struck down congressional enactments on delegation grounds date back to this era. But the Court lost the constitutional war, and the precedents that gave force and effect to the constitutional constraints on the federal government, including the anti-delegation cases, were effectively overruled. The Court correctly concluded that in the long run, it cannot resist the social and political elites. It has been loathe to challenge the Congress ever since, and it will not seriously attempt to do so in the future.

"It's time for a little perestroika on the Potomac," David Schoenbrod writes at the end of his book, and few would disagree. Despite his compelling analysis, Schoenbrod has surely failed in persuading the Supreme Court to bang the gavel on delegation. He may take solace, though, in having brought ordinary readers closer to picking up pitchforks. That, in the end, is how perestroika happens. ◆

Michael S. Greve is the executive director of the Center for Individual Rights, a public-interest law firm in Washington, D.C.

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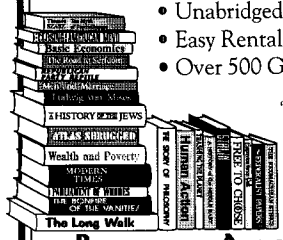

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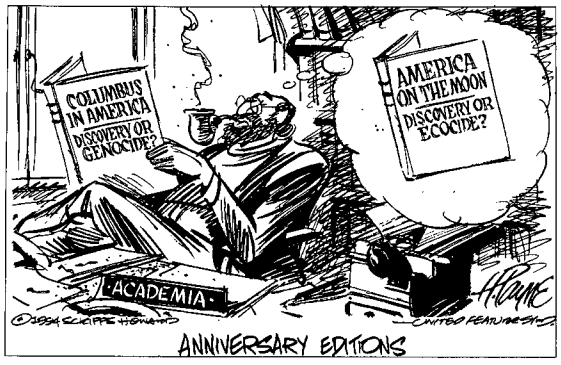
Science Friction

By Robert Storey

Higher Superstition: The Academic Left and Its Quarrels with Science, by Paul R. Gross and Norman Levitt, Baltimore: Johns Hopkins University Press, 314 pages, $25.95

SOMETIMES I GO OFF MY HEAD and teach a graduate course in world literature from the standpoint of evolutionary biology. Admittedly, this is an odd couple on the face of it, but such interdisciplinary marriages are quite common these days in literary studies. So when I tell my students that they are not going to like what they're about to hear—that my ideas run counter to prevailing orthodoxies—they are at first all knowing smiles. If grad students know nothing else, about either literature or biology, they know that all properly progressive courses should be "subversive" of the status quo.



But the smiles soon fade, the glints in their eyes become hard and accusing; some of their restless number grow surly, others start to scream in my face. How could I possibly believe that behavioral differences between the sexes are biologically disposed when everyone else knows that such so-called differences are merely culturally contrived? Don't I know that *capitalism* is the source of all hierarchy and competition, that the latter have nothing to do with "natural selection"? Am I not aware that my "science" is simply an arbitrary construct, one that perpetuates not only white male bias but also the bourgeois values of an oppressive social order that seeks to dominate, not understand, the natural world? "Truth," my students scold me in terms that brook no dissension, is nothing but a culturally specific phenomenon, and the "totalizing" tendencies of "scientistic" thought have been exploded completely by those postmodern thinkers who have deconstructed its self-aggrandizing pretensions.

This jumble of earnest ignorance, dogmatic arrogance, naive utopianism, unabashed political special pleading, and uncritical faith in what has come to be known in the humanities and many of the social sciences as "postmodern theory" constitutes the platform of the "academic left" mentioned in the subtitle of *Higher Superstition: The Academic Left and Its Quarrels with Science*, by Paul R. Gross and Norman Levitt. The authors have adopted the label, they concede, with "great misgivings," since the "academic left is not completely defined by the spectrum of issues that form the benchmarks for the left/right dichotomy in American and world politics."

What defines the term more generally is "a commitment to the idea that fundamental political change is urgently needed and can be achieved only through revolutionary processes rooted in a wholesale revision of cultural categories." Those categories include the assumptions, methodologies, and conclusions of modern science, all of which have been supposedly debunked over the past couple of decades by vociferous critics largely outside the sciences themselves.

Although Gross, professor of mathematics at Rutgers University, and Levitt, professor of life sciences at the University of Virginia, refer to the "quarrels" of these critics with the sciences (especially the "hard" sciences), what *Higher Superstition* in fact addresses are monologic rants of various kinds. These include outright rejections of the whole scientific enterprise as a mere game "of the rich in which whoever is wealthiest has the best chance of being right" (to quote the wisdom of the cultural "theorist" Jean-François Lyotard); critiques of its methods as flawed or biased or otherwise unacceptable (invariably for political reasons); and embraces of its findings as profoundly supportive of a "postmodern" outlook and ethos, often in defiance of the implications or even content of the actual findings themselves. Binding together these variations on a theme is what Gross and Levitt characterize as "muddleheadedness"—a muddleheadedness about science that is pervasive among academic humanists and that threatens the integrity of intellectual inquiry in the American academy as a whole.

ALTHOUGH THE THREAT COMES FROM DIFferent quarters, it is universally distinguished by its high moral tone. For the "poststructuralists" who march under the banner of recent French thinkers, especially that of the late Michel Foucault, science is simply one "language game" among others in a conceptual universe of competing "discourses." Hence, to elevate its truths over other "constructions" is tantamount to "colonizing" the intellectual landscape and enslaving one's hapless opposition.

For the Afrocentrists, science means an oppressive white Western enclave that has systematically pillaged and ignored so-called African science, especially that of the ancient Egyptians. (Assumed to be black, the Egyptians are credited with achievements ranging from "experimental aeronautics" to "a possible understanding of quantum physics and gravitational theory.") The Marxists, the feminists, the environmental evangelists, etc., all have their own agendas, and the terms of their quarrels are accordingly different. But the

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underlying message is very much the same: Either give us a science that underwrites our politics or we'll show you a face of scorn.

Gross and Levitt document with caustic—if appalling—specificity just how painfully ignorant most of these critics are of the sciences they criticize, how flagrantly they misrepresent the claims of those sciences, and how rabidly they magnify scientific transgressions that have for the most part receded into the forgettable past.

Consider, for instance, how the feminist "Biology and Gender Study Group" sought to demonstrate the extent to which the language of reproductive biology is poisonously "gendered." In a 1988 article unironically titled "The Importance of Feminist Critique for Contemporary Cell Biology," the group refers first to a popularized physiology text written in *1890*, and then to a paper by cytologist C.E. McClung published in 1901: "Using a courtship analogy wherein the many spermatic suitors courted the egg in its ovarian parlour, McClung...stated that the egg 'is able to attract that form of spermatozoon which will produce an individual of the sex most desirable to the welfare of the species.'" Such assaults upon the outdated and the innocuous coexist with pretensions to cutting-edge sophistication that are staggeringly bogus.

The results are no better when the academic left attempts to claim science for its own. For example, in "Chaos and Entropy: Metaphors in Postmodern Science and Social Theory," the cultural theorist Steven Best takes Newtonian mechanics to task for using "linear equations." But, as Gross and Levitt explain, "The Newtonian laws of celestial mechanics are expressed by a decidedly *nonlinear* system of ordinary differential equations." What might account for such an elementary error? For the postmodernist, "linearity" smacks of the ancien régime that was unseated by the "relativities" of the post-Einsteinian order, and Newton's thinking—hence equations, in Best's mind—must have been, primitively, "linear."

Misunderstandings like these, Gross and Levitt point out, "are not of the kind that can be remedied by a quick refresher course in elementary math and physics." At fault is the main assumption of the academic left itself: that "the sententious generalities that constitute the core of their doctrine are held to excuse them from the necessity of actually learning the particulars of the disciplines they criticize." Ironically, then, even as misinformed academic leftists excoriate the "Enlightenment project" as arrogant and overreaching, they themselves embody F.A. Hayek's definition of scientism. "The scientistic [view]," wrote Hayek in *The Counter-Revolution of Science*, "as distin-

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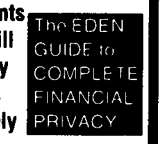

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guished from the scientific view is not an unprejudiced but a very prejudiced approach which, before it has considered its subject, claims to know what is the most appropriate way of investigating it." When particulars exist only to validate a preconceived conclusion, they are all too dispensable.

THE GENERAL ROOTS OF THE LEFT'S DISaffection with science are not really hard to find. They reach back into the Romantics' distrust of analytical reason and they've been fed ever since by the rankling waters of science's continually rising prestige. "The recent critiques," note Gross and Levitt, "incarnate attempts to regain the high ground, to assert that the methods of social theory and literary analysis are equal in epistemic power to those of science." But since social scientific and literary methods can't match the hard sciences in either predictive or explanatory power, their purveyors instead nourish the "perspectivist" notion that truths, including scientific ones, possess very limited historical and cultural validity. This "*perspectivism on the left*," declare Gross and Levitt in italics, "*is the true legacy of the activism of the 1960s and early 1970s*, a time when it was assumed that the oppressed are endowed with uniquely privileged insights, and the intellectual, as well as moral, authority of victims is beyond challenge."

Now victims have turned victors—or at least their academic champions have achieved an armchair "radicalism without risk." It's without risk in a double sense, for not only does that radicalism present very little real risk to the way research science is conducted (its revolutionary calls to arms "generally result in nothing more menacing than aphorisms lodged in obscure periodicals"), but there's also no risk to the "radicals" themselves: Their alarums are repeatedly and routinely shown respect by well-intentioned colleagues willing to indulge their sophistries in the vague interest of egalitarianism.

This isn't to suggest that the academic left poses no threat to the academy. When one realizes that such figures speak for the sciences in humanities and social science departments throughout American universities, it is easy to appreciate Gross and Levitt's characterization of the situation as "increasingly dangerous." Not only is the academy turning out an electorate whose scientific illiteracy is abetted by some of its most influential and highly placed faculty, but the young student-scientists who stand to lose the most by such illiteracy—particularly women and minorities—are encouraged to persist in a folly that ironically has been propagated in the name of democratization. "It is clear," write Gross and Levitt, "that black youngsters who aspire to scientific careers will be in deep trouble if their early education is dominated by the Afrocentrism espoused by Ivan Van Sertima, Hunter Havelin Adams, and their co-workers." And the authors fear that because of the pervasiveness of its appeal to non-scientific educators, the "feminist critique of science...[may have]...even more widely exclusionary results."

For the "poststructuralists" science is simply one "language game" among others. To elevate its truths over others is tantamount to "colonizing" the intellectual landscape and enslaving one's hapless opposition.

Gross and Levitt make several recommendations for remedying the current situation (all of which involve scientific professionals taking a more responsible role in monitoring educational agendas), but they give only glancing attention to the publish-or-perish ethos of contemporary academia. Everyone knows that the way you get to Harvard is much like the way you get to Carnegie Hall: Publish, publish, publish.

In the hard sciences, where "good" re-

search is either replicable or has an obvious instrumental application, this isn't necessarily a problem. But particularly in fields such as literary studies, anthropology, psychology, sociology, and philosophy, where agreed-upon standards of scholarship are elusive and heavily informed by personal political predilections, the incentive structure of today's universities rewards high-visibility publications over less-sensationalistic scholarship, typically without regard for accuracy. And since serious scientists, as Gross and Levitt confess, have been unaffected by almost all of the attacks on their disciplines (only the feminists have made any kind of impact, mainly by policing the halls of metaphor), it's unlikely they'll acquire much of a conscience about an iniquity that seems to lie well beyond their doors. The upshot is a situation that is indeed "dangerous"—and difficult to remedy.

Gross and Levitt have written an important book, albeit one likely to be ignored by the academic left itself. Anybody who describes the techniques of deconstruction as "hermeneutic hootchy-koo" is beneath the notice of the theoretically hip, and part of the left's strength is in the solidarity of its postmodern hipness. Still, to the degree that *Higher Superstition* exemplifies the informed scholarship that is the best antidote to "postmodern theory," Gross and Levitt contribute to the eventual discrediting of the academic left.

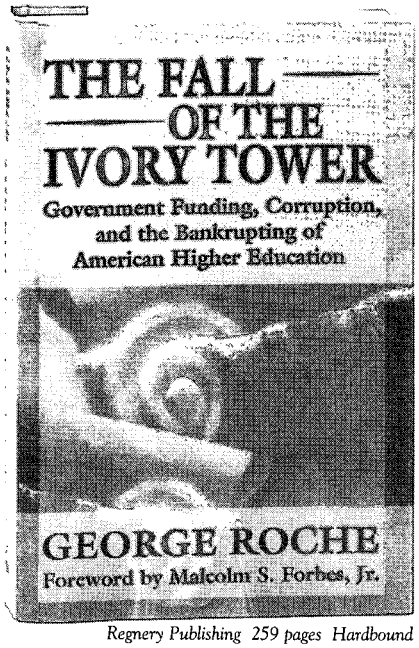
Robert Storey, professor of English at Temple University, has just completed a book on literary representation and evolutionary theory.

Resistance Tactics

By Ted Galen Carpenter

Strategic Nonviolent Conflict: The Dynamics of People Power in the Twentieth Century, by Peter Ackerman and Christopher Kruegler, Westport, CT: Praeger, 380 pages, $55/$22.95 paper

A PERSISTENT PROBLEM FACING THE victims of an invading army or an indigenous dictatorship is how to defend or restore their freedom, and especially how to do so without precipitating a bloodbath. The standard ini-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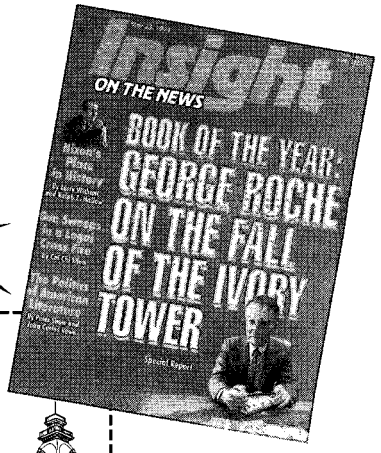

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tial response to invading forces is conventional military defense, but that approach is not particularly practical when the aggressor is much larger and more powerful. The most common forms of resistance to entrenched repressive regimes, whether homegrown or installed by a conqueror, are guerrilla warfare and terrorism. But the success rates of those strategies are spotty at best and likely to increase the level of human carnage.

In *Strategic Nonviolent Conflict: The Dynamics of People Power in the Twentieth Century*, Peter Ackerman, a visiting scholar at the International Institute for Strategic Studies in London, and Christopher Kruegler, president of the Albert Einstein Institution in Cambridge, Massachusetts, present compelling arguments that a well-conceived campaign of nonviolent resistance may be a more feasible option. Their book, which builds on the pioneering studies of scholars such as Gene Sharp and Thomas Schelling, provides crucial insights into the reasons why some attempts at nonviolent resistance succeed and why others fail. Although the authors do not attempt to offer a comprehensive strategic blueprint—the varied circumstances of confrontational situations would make such a rigid formulation impractical—they do develop several important principles of nonviolent strategy.

The topic is of more than academic interest in the post–Cold War era. Ackerman and Kruegler's observations are pertinent to any number of contemporary geopolitical situations. Consider the tense relations between Russia and the small countries on its perimeter. The Baltic states fear the upsurge of Russian chauvinism symbolized by Vladimir Zhirinovsky and worry that it might be the prelude to a new wave of Russian expansionism. But there's no way that Estonia, Latvia, and Lithuania, given their limited populations and resources, could ever hope to repel an invading army from a neo-imperial Russia. Or consider Cuba. The Cuban economy is so weak that it must ration butter, but the army is hardly lacking guns. Dissidents hoping to accelerate the demise of the Castro regime have few options other than nonviolent resistance.

As befits the relevance of its topic, Ackerman and Kruegler's book is not a dry theoretical treatise disconnected from the real world. The authors examine six historical episodes of nonviolent resistance undertaken by populations that lacked access to effective military power.

Those episodes are quite diverse: the Russian rebellion of 1905; the German public's resistance to the French occupation of the Ruhr in 1923; India's agitation against British colonialism in 1930–31; Danish resistance to the Nazi occupation in World War II; the civic strike against the dictatorship of Gen. Maximiliano Hernández Martinez in El Salvador in 1944; and Solidarity's campaign against Poland's communist government in 1980–81.

THE AUTHORS' HISTORICAL SURVEY UNdermines a number of persistent myths about nonviolent resistance. One is the notion that such movements are spontaneous mass uprisings by populations that have been pushed beyond endurance—the implication being that it is futile to outline organizational or strategic principles for waging a resistance campaign because such uprising cannot be anticipated, much less channeled. The case studies examined show, however, that while there were spontaneous aspects to the resistance movements, there were also important elements of planning and coordination that varied in effectiveness and sophistication.

Another myth is that nonviolent resistance is both "passive" and pacifist (indeed, the technique is all too often misnamed "passive resistance"). Ackerman and Kruegler demonstrate clearly that such movements, while seeking to avoid bloodshed, can be quite assertive, if not aggressive. For example, the *Ruhrkampf* directed against the French included the open harassment of French military personnel. More recently, the Philippine "People Power" revolution in 1986 involved tense confrontations between demonstrators and the military. Leaders of the insurgent forces deliberately courted such confrontations to force the military to choose sides—either to fire on innocent civilians or abandon its support of the Marcos dictatorship.

In fact, Ackerman and Kruegler point out that there is no conceptual chasm separating violent and nonviolent tactics; there is instead a spectrum of measures. Even basically "nonviolent" movements sometimes resorted to sabotage of industrial machinery, communications paraphernalia, and transportation equipment as part of their resistance campaign. That was a prominent feature of the 1905 Russian rebellion, the German resistance to the French occupation of the Ruhr, and the Danish underground's harassment of the Nazis.

Indeed, leaders of nonviolent campaigns frequently find it difficult to restrain supporters who wish to escalate the level of violence. The disappointing outcomes of the Russian and German case studies suggest that a failure to maintain adequate nonviolent discipline can reduce the probability of achieving a movement's ultimate objectives because it alienates potential domestic and external supporters.

The most tenacious myth Ackerman and Kruegler debunk is that nonviolent

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resistance is effective only in dealing with democratic governments that have adopted uncharacteristically repressive policies. According to that argument, peaceful demonstrations and civil disobedience can prick the conscience of democratic rulers and publics, gain the support of international opinion, and force a change of policy while totalitarian and authoritarians regimes will simply use whatever force is necessary to smash the opposition.

THE EPISODES EXAMINED IN *STRATEGIC Nonviolent Conflict* suggest that the reality is far more complex. If the conventional wisdom were correct, the successful movements would have been the German resistance to the occupation forces of democratic France and the Indian anti-colonialism movement against democratic Britain. And, following the logic through, the Danish resistance to Nazi Germany's occupation, the Salvadoran rebellion, and Poland's Solidarity would have had faint prospects.

The actual results don't fit that pattern. For example, the resistance to the Ruhr occupation ultimately fizzled, despite substantial covert support from the German government. (Only the U.S.-sponsored Dawes plan eventually caused Paris to withdraw its forces.) The Indian effort, led by Mohandas K. Gandhi, failed as well, at least in the short run. (Although Britain ultimately granted India independence, it did so only because of the financial exhaustion caused by World War II.) Conversely, the Danish resistance movement was surprisingly effective; the El Salvador strike ousted an odious dictator; and the Solidarity campaign, while only partially successful in the short term, created the conditions for a definitive victory just a few years later.

Ackerman and Kruegler demonstrate that the political orientation of the target regime is not the most important factor in whether or not a particular movement succeeds. Instead, the authors argue that what makes or breaks a resistance movement is how well it implements certain principles

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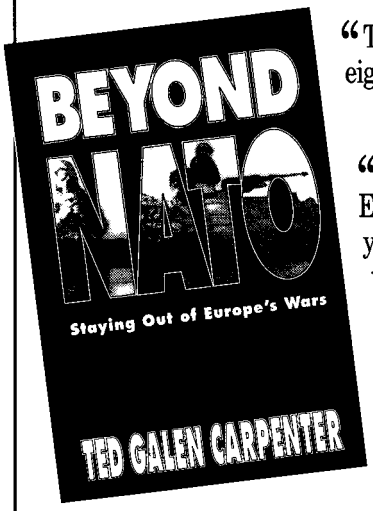

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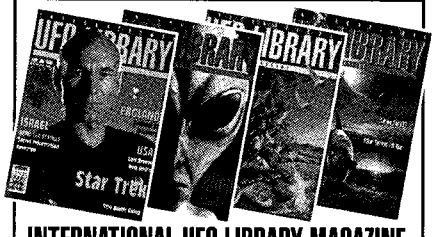

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of nonviolent conflict. The major principles identified by Ackerman and Kruegler include a number of commonsense observations. Under "principles of development," for example, the authors stress the importance of formulating functional objectives, developing organizational strength, and attempting to secure external assistance. Under "principles of engagement," they emphasize such things as muting the impact of the opponents' preponderance of force and maintaining nonviolent discipline (i.e., eschewing terrorism).

Other insights are less obvious, however, and many of them relate to the importance of maintaining tactical flexibility. One vital principle of development, for instance, is to expand the repertoire of nonviolent sanctions. The struggle against repressive authorities is inherently dynamic, not static. Consequently, the regime in power will attempt to parry the tactics employed by the insurgents and then counterattack. Staying with one tactic (e.g., mass demonstrations) too long can enable initially beleaguered authorities to regroup and strike back at a time and place of their choice. That is perhaps the saddest lesson of the failure of the student-led Chinese campaign for democracy, which perished in Tiananmen Square.

The need to alienate the regime from expected bases of support is an especially crucial principle of engagement. Hence, for example, Solidarity's inability to undermine the military's loyalty to the communist regime allowed the Polish government to declare martial law and rely on military units to arrest the union's leadership. Adjusting offensive and defensive operations according to the relative vulnerabilities of the protagonists represents an essential "principle of conception." Leaders of the El Salvador civic strike executed that tactic to perfection. As the authors note, "Each time the movement chose to escalate the conflict, they did so in relation to the opponent's newly exposed weaknesses."

All of those measures have the common denominator of sustaining a flexible, dynamic, and offense-oriented resistance campaign. Indeed, a common characteristic of the unsuccessful nonviolent movements highlighted in the historical case studies is the tendency to persist with one set of tactics rather than adjust to changing conditions to exploit the oppressor's weaknesses or to compensate for emerging vulnerabilities in the resistance movement. The principles outlined by Ackerman and Kruegler should help the leaders of future resistance campaigns to focus better on strategic and tactical fundamentals. Among other benefits, nonviolent movements may exhibit less of a disorganized and "spontaneous" quality.

While *Strategic Nonviolent Conflict* provides an important intellectual resource for those interested in the mechanics of unarmed defiance, some important questions, of course, remain. Although the authors effectively undermine the myth that nonviolent resistance can be effective only against misbehaving democratic governments, they are less successful at determining how such a strategy might be sustained against a regime or invading force that is determined to prevail at all costs and is able to retain the loyalty of enough armed personnel to execute its policies.

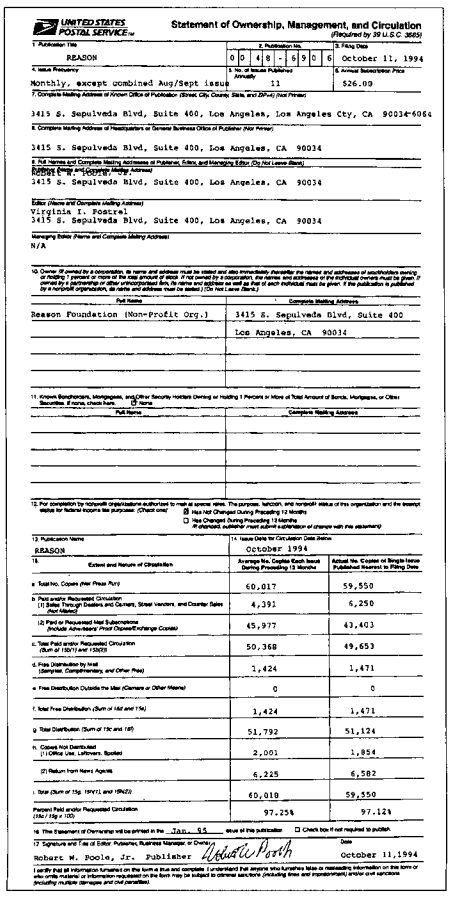
In that regard, the Danish example is not entirely compelling. The Nazis were preoccupied elsewhere and regarded the occupation of Denmark as a relatively low-priority matter. One suspects that a campaign of nonviolent resistance undertaken by the Poles, Ukrainians, or other populations that stood in the way of Berlin's quest for *Lebensraum* in Eastern Europe would not have fared as well. Similarly, such a strategy does not appear to be feasible in the maelstrom of the former Yugoslavia, where the feuding factions seem willing to slaughter each other without a pang of guilt. It is a thorny problem that advocates of nonviolent resistance must examine more thoroughly.

Additional analysis is also needed in connection with the authors' sobering ob-

servation that while resisters can raise the costs to an oppressive government or occupation force, the authorities can also raise the costs to the resisters in a variety of ways. Several of the principles outlined by Ackerman and Kruegler may need to be refined—and perhaps others developed—to help shift the odds more decisively against the forces of oppression.

Such issues await the next spate of books and articles on the subject. *Strategic Nonviolent Conflict* makes an invaluable contribution to the study of nonviolent resistance and offers several useful guidelines to those who are dedicated to defending or recovering their freedom in the post–Cold War world. Ackerman and Kruegler have taken our understanding of nonviolent conflict to a new and impressive level.

Ted Galen Carpenter is director of foreign policy studies at the Cato Institute. His latest book is A Search for Enemies: America's Alliances after the Cold War.



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Selected Skirmishes

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wrong choices. *Losing Ground* suggested cutting off welfare as a remedy to the anti-social incentives placed before the poor. It was an extreme measure, but humane: It would force individuals to take greater responsibility and pull themselves up from poverty. But *The Bell Curve* now explains that their fate is highly correlated with IQ, IQ is unchangeable, and their chances of success are slim or none. Attitude, schmattitude—you are genetically programmed to wallow. It seems that we have indeed lost ground.

The environment, whatever its proportional explanatory power in estimated equations, is all important. Proof: Murray's data indicated U.S. Hispanics average an IQ rating below European whites, who are on average below Asians. But "Hispanics" are a linear combination of "Europeans" and "American Indians," the latter group emigrating from...Asia. Oops!

The fact is that not even race is 100 percent inherited over time. While I cannot be born "a poor black child," as Steve Martin claimed in *The Jerk*, my kid most certainly could be. By intermarrying, ethnic groups such as Asian Americans or Jews are already a motley crew, but the principle is universal. It strikes deep into the heart of deterministic models of social development when the so-called explanatory variables slip and slide out from under the analysis altogether.

MURRAY FEELS THAT WHITE ELITES now whisper their thoughts on such matters, and only the P.C. sledgehammer has kept these questions buried publicly. It is ironic that Murray appears initially offended by politically correct thinking, as his "results" steer him into the belly of the beast: group awareness, group achievement, individual futility.

What Murray's mistake has made clear is that not all social taboos are idiotic. There is probably a good reason one is chastised for telling the naughty joke before grandma leaves the room, and it is not insane that we regularly whisper in private remarks we would not make at a public microphone. Context is critical, and the context in which one whispers a thought to a friend is vastly dissimilar from the informational circumstances involved in a speech, university lecture hall, or televised senate hearing.

There is special context to the question: "Are the IQs of U.S. blacks lower than those of European whites?" Indeed, asking about anyone's IQ seems a rather bold venture. I cannot remember ever having been asked mine (I do not know it). Not on a job interview—despite its great predictive power—nor by my physician, nor by a date, nor elsewhere. If I were, I would not take the question quite seriously: The question is rude.

Is it less rude to aggregate by racial subgroup? Indeed, why not aggregate elsewise, comparing, for instance, the IQs of people who worry about racial IQs vs. those who do not care? Without doubt, there is risk that useful social debate will be poisoned by such talk, rather than opened. It would seem that some great payoff should lie in the answer, a provocative insight to compensate for the offense.

But what is the socially redeeming value at which Murray arrives? Conservative multiculturalism!

Having little patience for the concept of a group IQ, and seeing that its logic leads Charles to this philosophical Devil's Island, I am delighted to hear that *In Pursuit* has recently been released in paperback. I urge you all to read and devour this delicious paean to individualism, written by one of our most brilliant thinkers. Which, with the issuance of *The Bell Curve*, suggests that IQ predicts not so well after all.

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California at Davis.

Ding Dong

By Thomas W. Hazlett

Charles Murray fails to ring my bell.

When Charles Murray's *In Pursuit* came out in 1988, I wrote him a two-page letter extolling the work. Filled with fascinating insights, the book made the case for individual liberty in real, fleshy tones. It was a brilliant treatise, a fact not lost on *The Washington Post*'s William Raspberry, who made his book report a two-part editorial page series. Despite philosophical differences with Murray, he was profoundly challenged by the tome.

Having read Charles's last great book, I very much look forward to reading his next. But based on his recent attempt in *The New Republic* to summarize his current ballyhooed effort, *The Bell Curve* is not it.

To his credit, Murray looks the bull squarely in the eyes in the essay, focusing on the alleged relationship between IQ and race. The short story is that raw intelligence counts for a lot in life and that IQ doesn't change much for either individuals (at least after their potty-training years) or for groups. African Americans as a group are low on the IQ totem pole, Asians high, Europeans in the middle. So? The fact that *individuals* differ widely and that attitude also counts for a lot encompasses everything that is relevant about racial differences *for public policy*.

The most upbeat recommendation Charles can muster is for each group to celebrate its own relative qualities (even if intelligence ain't among 'em). If the Scots can celebrate thrift (because their clan is known to be so tight they squeak), then all of us can look to pronounced group attributes as handsome qualities, and rejoice in our genetically driven uniqueness. Thus, what Murray labels a conservative multiculturalism.

Is abject social failure to be offset by the counterclaim: "Where I'm from, people are desperately poor and stupid, but pride themselves on being outstanding at a wide range of Nintendo games"? This is offensiveness squared! Wasn't it *In Pursuit* that boldly explained how happiness is achieved via an individual's performance against *himself*—according to all the best scientific research. Not a lot about group performance there. Race norming, liberal or conservative, emits an odious scent, one which would make a devotee of *In Pursuit*'s glorification of the American Dream gag.

The thesis that good genes are terribly important is unassailable, but they are surely far less important than other environmental variables—such as *place of birth*. A smart person born in China will, on average, make far less than an intellectually challenged person born in California. When Murray claims that perhaps 60 percent of achievement can be attributed to IQ, the remainder to environmental factors, he has performed an interesting sleight of hand by delimiting the analysis to like cultural groupings.

Exploring the racial IQ theory across cultures would explode the myth of genetic determinism. Why are the Asian countries so desperately poor, on average, when their IQs are higher than Europeans? Why were the East Germans so failure prone compared to West Germans, using income as a proxy for success? And how have the Argentinians, once with a per capita income seventh highest in the world, fallen to the impoverished status of "less-developed country"?

When Murray says that IQ explains 60 percent of the outcome, he thinks he means that, in estimated regression equations, IQ variation will track 60 percent of the income differences. This itself, as noted, is something of a trick. But what does the 60-percent claim mean, operationally? Does Michael Jordan just walk on the court and score 32 a game because he's got the right stuff, or does he practice every day of his life—and exude an awesome competitive spirit—to achieve greatness?

The obvious answer is the latter, which is not to say that genes that make you grow to 6'6" are not a factor. But if effort (shaped by our environment) is only 40 percent of the total, it is 100 percent of the component we may directly affect, personally or with social policy.

Murray does proclaim, "Heredity is not destiny." Nice try, Charles, but if that is so, why do you dwell on it insufferably? Why do you predict that we are not liable to change intelligence much, citing the failure of Head Start programs as proof? If government uplift debacles implied that real people could not achieve real results, then the very real failure of federal housing programs would prove the theoretical inability of modern societies to find shelter.

Murray used to understand that government was failing and that poor people were pretty much like us; now he believes that poor people are failing and the government is pretty much like us. The poor and unemployed just do not have the intellectual firepower to work hard, suffer through low wages and odd jobs while juggling school, career, and family, and send their kids off to a better life. Now the poor really are victims, and it really would be cruel to leave them to the harsh challenges of real life.

A decade ago, another great book by one Charles Murray bravely challenged conventional wisdom on welfare policy by considering the poor just plain folks: Given wrong incentives they will make

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